

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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COURT OF APPEALS, DISTRICT OF COLUMBIA

JANUARY TERM, 1928

No. 4702

498

FRANK T. HINES, DIRECTOR OF THE UNITED STATES
VETERANS' BUREAU, APPELLANT

VS.

J. H. STARNES, COMMITTEE OF THE ESTATE AND
PERSON OF CHARLIE JOE STARNES

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

FILED JANUARY 10, 1928

PRINTED _____, 1928

COURT OF APPEALS, DISTRICT OF COLUMBIA

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FRANK T. HINES, DIRECTOR OF THE UNITED STATES
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vs.

J. H. STARNES, COMMITTEE OF THE ESTATE AND PER-
SON OF CHARLIE JOE STARNES, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

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Supreme Court of the District of Columbia

J. H. STARNES, COMMITTEE OF THE ESTATE AND Person of Charlie Joe Starnes, petitioner	}	At law, No. 73084.
vs.		
FRANK T. HINES, DIRECTOR OF THE UNITED States Veterans' Bureau, respondent		

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition for writ of mandamus

Filed April 12, 1927

In the Supreme Court of the District of Columbia

J. H. STARNES, COMMITTEE OF THE ESTATE AND Person of Charlie Joe Starnes, petitioner,	}	At law, No. 73084.
vs.		
FRANK T. HINES, DIRECTOR OF THE UNITED States Veterans' Bureau, respondent		

To the honorable the Justices of the Supreme Court of the District of Columbia:

Your petitioner, J. H. Starnes, as father and committee of the estate and person of Charlie Joe Starnes, respectfully shows unto the court as follows:

I. That he is committee of the estate and person of the said Charlie Joe Starnes, duly appointed as such by the county court in and for the county of Smith, State of Texas, by decree of that court on the 4th day of October, 1926, certified copy of which said order of appointment will be produced at the trial hereof and certified copy of which is now in the files of the respondent, the Director of the United States Veterans' Bureau, and reference to which is hereby made, and brings this suit as committee as aforesaid of his said son, Charlie Joe Starnes, who is a resident of the city of Tyler, county of Smith, State of Texas, is a citizen of the United States, temporarily residing for the last three months in the District of Columbia.

2 II. That the respondent Frank T. Hines is Director of the United States Veterans' Bureau and as such an officer of the United States Government, residing in and exercising his official functions in the District of Columbia, and is sued in his said official capacity.

III. That on, to wit, in the month of January, 1918, your petitioner voluntarily enlisted as a seaman of the second class in the United States Navy and served therein continuously from said date until

the 22d day of June 1918, when he was honorably discharged from the said service because of his physical inability to continue in the said service, with a physician's certificate of disability for disabilities incurred in line of duty, which said disabilities so incurred in line of duty because of the peculiar hardships of the service, and because of the accident which befell petitioner while so engaged in the active service in the said United States Navy, without misconduct on his part, wilful or otherwise, and by reason of which said disabilities he became, prior to said 22d day of June 1918, permanently and totally disabled from following continuously or at all any occupation of a substantially gainful nature or character, and which said state of permanent and total disability continued from and since said 22d day of June 1918, and so continues to the present time.

IV. That by section 200 of the World War veterans' act of 1924 (43 Stat. 607), it is provided that—

“For death or disability resulting from personal injury suffered or disease contracted in the military or naval service on or after April 6, 1917, and before July 2, 1921, or for an aggravation or recurrence of a disability existing prior to examination, acceptance, and enrollment for service, when such aggravation was suffered or contracted in, or such recurrence was caused by, the military or naval service on or after April 6, 1917, and before July 2, 1921, by
3 any commissioned officer or enlisted man, or by any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female), when employed in the active service under the War Department or Navy Department, the United States shall pay to such commissioned officer or enlisted man, member of the Army Nurse Corps (female), or of the Navy Nurse Corps (female), or women citizens of the United States by the United States Government and who served in base hospitals overseas, or, in the discretion of the director, separately to his or her dependents, compensation as hereinafter provided; but no compensation shall be paid if the injury, disease, aggravation, or recurrence has been caused by his own wilful misconduct.”

V. That on the 25th day of May, 1921, and on divers dates since said date to the 8th day of July, 1922, the Bureau of War Risk Insurance, acting through its director, and assistant directors, in the exercise of their discretion so to do, has, on the facts and evidence submitted to it, held that the injuries, diseases and ailments from which your petitioner suffers and by reason of which he is permanently and totally disabled as aforesaid, are compensable, were contracted in the military service of the United States as aforesaid, are disabilities resulting from injury incurred in line of duty while employed in the active service of the Navy of the United States of America, and that said diseases and ailments so contracted in the military service in line of duty were not contracted by reason of the willful misconduct of your petitioner, and were diseases and ailments compensable in their nature, which rendered your petitioner totally disabled from following a gainful occupation, which said facts and conclusions as aforesaid are and continuously have been, during the dates aforesaid, admitted by the respondent, Director of the United States Veterans' Bureau, and his predecessors in office, by whose acts

and findings, in the absence of fraud, he is bound, finally and conclusively.

4 VI. That on said 8th day of July 1922, four years after petitioner's discharge from the United States Navy, and without first affording your petitioner medical examination, and without any reason whatsoever therefor, the said respondent, Director of the United States Veterans' Bureau, discontinued the compensation theretofore awarded and paid by him to your petitioner as one totally disabled from following a gainful occupation because of injuries, diseases and ailments suffered and contracted in line of duty in the United States Navy, without misconduct, wilful or otherwise of the petitioner and held as a fact that the said disabilities, (though not noted on petitioner's enlistment record or medical report on enlistment as existing prior to enlistment and notwithstanding that petitioner was discharged from the United States Navy because of these said disabilities and notwithstanding that his said discharge from the service and the surgeon's certificate of disability accompanying the same, made four years prior to the said 8th day of July 1922, and contemporaneously with petitioner's said discharge, noted and held the said disabilities to have been incurred in line of duty in the United States Navy), existed prior to enlistment in the said Navy, were not incurred in the said service, and were not aggravated by said service which said finding of said respondent your petitioner denounces as an arbitrary exercise of the said respondent's discretionary authority in violation of a recognized opinion of the Solicitor General of the United States & the provisions of the World War Veterans' Act final and binding upon said respondent, holding that all enlisted men must be conclusively
5 taken and presumed to be in sound condition physically and mentally on their enlistment or induction into the service of the United States Navy, except as to disabilities noted on their enlistment record, and that any and all diseases and ailments, physical and mental, apparent at the time of discharge from the service, not noted on the enlistment record, are conclusively presumed to have been incurred while in the military service. (Full reference to said opinion is made.)

VII. That on the 2d day of December 1924, your petitioner, in the District Court of the United States, for the Eastern District of Texas, in the Tyler division thereof, cause No. DL-2690, on the dockets of that court, instituted suit against the United States of America on his contract of war risk insurance, alleging that the same had matured by reason of his having become, on said 22d day of June 1918, and having been continuously since said date, permanently and totally disabled from following a gainful occupation by reason of injuries suffered and diseases and ailments contracted during his service in the United States Navy (copy of which declaration is hereto attached and asked to be considered a part hereof, and the allegations with respect to his said diseases therein set forth, and the origin of the same, are incorporated as fully by reference as though set forth *in extenso* herein); that the United States of America denied the averments of his said declaration, claiming his said disabilities to be permanent and total and to have been incurred while he was an enlisted man in the said United States Navy; that

issue was joined on said averments and the court (trial by jury having been waived) found said averments to have been proved by the evidence and that petitioner was, since said 22d day of June A. D. 1918, and continuously since that time had been totally and permanently disabled from following a gainful occupation, by reason of the injuries sustained, ailments and diseases suffered and contracted by petitioner in said service of the United States Navy, and the said United States of America subsequently paid the judgment awarded your petitioner by the court against it in that said action.

VIII. That the court by its said opinion and judgment in the aforesaid case, found petitioner to have been when discharged from the United States Navy in June 1918, and continuously since said date, suffering from a mental disease which had rendered and now renders him permanently and totally disabled, from and since said 22d day of June 1918, from following a gainful occupation and which said diseases or ailments, so determined by the court as total and permanent, is the identical disability held by respondent herein prior to his arbitrary and unlawful act of July 8, 1922, hereinabove complained of, denying petitioner compensation on the ground that the said disability existed prior to his enlistment in 1918, to have been in line of duty in the United States Navy, without wilful misconduct on the part of petitioner.

IX. That by reason of the verdict and judgment of the court in the above referred to law cause finding your petitioner to be permanently and totally disabled for and during the period aforesaid, it becomes and is the duty of the respondent, Director of the United States Veterans' Bureau, to rate your petitioner as one permanently and totally disabled, and to pay to him or by allotment to his dependents the sum of one hundred (\$100) per month for each and every month from the aforesaid date of June 22, 1918.

X. Yet notwithstanding the clear duty of the respondent, he being without any discretion in the premises by reason of the verdict of the court as aforesaid, and the determinations of the respondent himself prior to the unlawful and illegal act of July 8, 1922, hereinabove complained of, he has arbitrarily, capriciously and finally refused to recognize the petitioner's status as one permanently and totally disabled, and has arbitrarily, capriciously and finally refused to rate your petitioner as one permanently and totally disabled, and has arbitrarily, capriciously and finally refused to pay your petitioner or allot to his dependents the said sum of one hundred dollars (\$100) per month because of the disability aforesaid.

Wherefore, inasmuch as the said defendant has officially, capriciously and finally decided not to allow and pay to the petitioner the said compensation and from said final decision there is no further appeal; and such decision being in excess of said defendant's power and jurisdiction to render and contrary to and in disregard of the verdict of the court in the insurance case aforesaid, and petitioner being without further remedy, by appeal or otherwise in the premises, your petitioner prays:

1. That a writ of mandamus may be issued and directed to the said defendant Frank T. Hines, Director of the United States Veterans' Bureau, commanding him to rate your petitioner as perma-

nently and totally disabled and to pay to your petitioner, or by proper allotment to his dependents, the sum of one hundred dollars (\$100) per month from and including the month of June 1918, to and including the present date.

8 2. That a proper rule be issued against the defendant requiring him to show cause why the foregoing prayer should not be granted.

3. And for such other and further relief as the Court may deem proper in the premises.

J. H. STARNES, *Petitioner.*

R. H. McNEILL,
JOHN W. MAHER,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

I, J. H. Starnes, committee of the estate and person of Charlie Joe Starnes, do solemnly swear that I have read the foregoing petition, by me subscribed, and know the contents thereof; that the matters and things therein stated of personal knowledge are true and those stated on information and belief, I believe to be true.

J. H. STARNES.

Subscribed and sworn to before me this 9th day of April, A. D. 1927.

[NOTARIAL SEAL.]

MARTHA F. FANSLER,
Notary Public, D. C.

9

Exhibit No. 1

In the District Court of the United States of America for the Eastern District of Texas, Tyler Division.

CHARLIE JOE STEARNS, BY NEXT FRIEND, J. H. Starnes,	} No. D. L. 2690. 73084
vs.	
THE UNITED STATES OF AMERICA,	

To the honorable judge of the District Court of the United States of America, in and for the Eastern District of Texas, Tyler Division:

J. H. Starnes, acting on behalf of his son, Charlie Joe Starnes, discharged and permanently disabled sailor of the United States Navy, of the town of Tyler, county of Smith, State of Texas, and acting as next friend of the said Charlie Joe Starnes, the said complainant also residing in the town of Tyler, county of Smith, State of Texas, and brings this his complaint on behalf of the said Charlie Joe Starnes, against the United States of America in accordance with section 13 of the war risk insurance act with its amendments, known as the war risk insurance act, enacted by the United States Congress, and for cause of action respectfully represents as follows, to wit:

1

That the said Charlie Joe Starnes was enlisted in the United States Navy as a seaman of the second class, on January 7th, 1918, at the naval recruiting station at Dallas, Texas, for a period of four years,

and that he was assigned by the Navy Department, on January 7th, 1919, to the receiving ship, Norfolk, Virginia; on February 24th, 1918, to the U. S. S. *Utah*; and on May 19th 1918, to the receiving ship, Norfolk, Virginia; and under the term of said assignment he saw actual service on behalf of the United States Government during the World War; that on or about May 24th 1918, he was transferred to the naval hospital at Norfolk, Virginia, and on June 7th, 1918 he was sent back to the receiving ship, Norfolk, Virginia.

2

That while in the service of the United States Navy as above set forth, on board the U. S. S. *Utah*, the high explosive shells of the guns while said U. S. S. *Utah* was at Guantanamo Bay, where the said Charlie Joe Starnes was training, affected his mind to such an extent that he became a psychopathic type and more or less irresponsible for his acts; that all of said conditions were brought about while he was in the service as aforesaid and while an enlisted seaman in the service of the United States Navy.

3

That on July 22nd, 1918, the said Charlie J. Starnes was honorably discharged from the U. S. receiving ship at Norfolk, Virginia and from the naval service of the United States as per medical survey of that date; and in connection therewith your petitioner herein shows that the said Charlie Joe Starnes from time to time received medical attention, while in the service of the United States Navy, especially at the naval hospital, Norfolk, Virginia, May 24th, 1918 and it is further shown that his physical disability occurred in the line of duty, not alone while on board the U. S. S. *Utah*, but also on the U. S. S. *Santiago*, on which he saw service while an enlisted seaman in the United States Government, as well as the other ships above mentioned.

4

That on February 12th, 1918 while the said Charlie Joe Starnes was in active service of the United States Navy, as aforesaid, he was issued by the United States of America, Treasury Department, Bureau of War Risk Insurance, Washington, D. C., a certificate of insurance effective February 12th, 1918, certifying that the said Charlie Joe Starnes had applied for insurance in the amount of ten thousand (\$10,000.00) dollars, payable, in case of death or total permanent disability, in the monthly installments of fifty-seven and 50/100 (\$57.50) dollars, subject to the regulations of "an act entitled "An act to authorize the establishment of a war risk insurance in the Treasury Department," approved September 2nd, 1914, and for the other purposes, approved October 6th, 1917, subject in all respects to the provisions of such act or of any amendments thereto and all regulations thereunder, which constituted the contract, which policy in the case of death of the said Charlie Joe Starnes was payable \$5,000.00 to Ruth Elizabeth Starnes, his wife, and \$5,000.00 to his

mother Beatrice Jarvis which certificate of insurance constituted a contract by and between the United States Government and the said Charlie Joe Starnes, said certificate being attested by W. G. McAdoo, Secretary of the Treasury, William C. DeLanoy, Director of the Bureau of the War Risk Insurance, and countersigned at Washington, D. C. by I. L. Baird, Register, all as more fully shown by said certificate, the original thereof being in the possession of the
12 United States Government.

That the said Charlie Joe Starnes, while in the service of the United States of America, and the United States Navy, as aforesaid, suffered and contracted the diseases mentioned above, and that same has become more or less aggravated, and that on the date of his discharge from the Navy, to wit; June 22nd 1918, he was permanently and totally disabled and absolutely incapacitated from earning his livelihood, or from following continually any occupation whatsoever whereby he could gain his livelihood, and specifically from following the vocation which he had followed prior to his enlistment in the United States Navy; and consequently by reason of said diseases contracted in the United States Navy he has since said time and since his discharge been permanently and totally disabled and incapacitated from following any vocation whatsoever, and has been at certain times confined to a hospital and also been under the care of psychopathic physicians of the United States Government, and is now recognized, and has been recognized, not alone by the United States Army authorities and medical directors, but also by other competent physicians, as being permanently and totally disabled and incapacitated from earning his livelihood, or following his former vocation in which he was engaged before he enlisted in the United States Navy, from the date of his discharge, June 22d, 1918.

6

Furthermore, petitioner shows, acting on behalf of his said son, and as next friend of his said son, the said Charlie Joe Starnes was
13 allowed vocational training by the United States Government, but that owing to the condition of his mind, resulting from the diseases contracted in the United States Navy, and the result of the shell shock, etc., he has been absolutely incapacitated to follow said vocational training, and was declared by the United States Government medical authorities as being "not feasible", either mentally or physically for vocational training, and that he was absolutely and permanently disabled and incapacitated from following any vocation whatsoever that the United States authorities might require him to follow while in vocational training; that Charlie Joe Starnes entered training on July 19th 1921 as a commercial artist under John Doterroff of Dallas, Texas, and on August 8th, 1921, he was turned out of training by the Federal Bureau doctors of district 14, stating "not feasible" for training, and placed on a disability rating fifty per cent and ordered to report to the hospital in Houston, Texas, for treatment and examination; that he reentered vocational training on September 2nd, 1921, with Linz Brothers, at Dallas, Texas for training as an optician, but only remained there a week, and was absolutely incapacitated, mentally and physically, from carrying out said voca-

tion to which he was assigned; and then the said Charlie Joe Starnes was put on the sick list until December 1st 1921 and then placed back on compensation at fifty per cent disability, and that he remained on a fifty per cent disability rating until May 15th, 1922, when the said Charlie Joe Starnes was placed back in training as an architectural draftsman at the Oklahoma School of Mines, Wilber-ton, Oklahoma; and on or about June 7th, 1922 he was placed back on sick list, and while on the sick list he was given another examination by the United States medical examiners on July 14 15th, 1922, and turned out of vocational training, pronounced "not feasible" and put back on fifty cent disability rating; and that since said date, and from the date of discharge from the United States Navy, the said Charlie Joe Starnes has been absolutely incapacitated from carrying on his former vocation and earning his livelihood, and is still incapacitated from so doing.

7

That from the date of his said son Charlie J. Starnes' discharge aforesaid, and owing to his permanent total disability as aforesaid, claimant has made repeated demands upon the officials of the United States of America and the Treasury Department and the Bureau of War Risk Insurance, on behalf of the said Charlie J. Starnes, to pay to him under the terms of the aforesaid certificate fifty-seven and 50/100 (\$57.50) dollars per month from the date of his discharge, to wit, June 22nd 1918, up to the present time, as well as to pay him his compensation that might be due as a permanently disabled United States seaman, but said officials have refused so to do, and that for *the* reasons aforesaid, and under the terms of the said certificate, the said Charlie Joe Starnes is entitled to claim, and your petitioner, his next friend and father, does claim, of the United States of America total disability compensation under said certificate from the date of his discharge up to the present time, making due complaint up to this date by the United States of America, under the terms of said certificate, compensation for seventy-seven and two-thirds months, in installments of fifty-seven and 50/100 15 (\$57.50) dollars per month, or an aggregate amount of four thousand four hundred sixty-five and 83/100 (\$4,465.83) dollars, and the said Charlie Joe Starnes is further entitled to claim from the United States of America, through its Treasury Department and Bureau of War Risk Insurance, enforcement of said Treasury Department's certificate of insurance on the life of the said Charlie Joe Starnes from the date of its issuance, as a binding and valid contract between complainant and the United States of America, and is also entitled to claim whatsoever compensation that might be due him under the terms of said act and the amending thereto, and hence this claimant does claim and is entitled to claim the sum of four thousand four hundred sixty-five and 83/100 (\$4,465.83) dollars thereunder, as aforesaid as well as any and all installments that might be due thereunder of fifty-seven and 50/100 (\$57.50) dollars per month until said certificate and all conditions thereof have been adequately fulfilled in accordance with the statutes made and provided in such cases.

Complainant further shows that on behalf of the said Charlie J. Starnes, he has made due demands on the Bureau of War Risk Insurance for the monthly installments due the said Charlie J. Starnes under the terms of the certificate aforesaid, through his attorney, which items in the aggregate amount up to the present time to four thousand and four hundred sixty-five and 83/100 (\$4,465.83) dollars, as aforesaid, and that he has submitted full proof of the permanent and total disability of the said Charlie Joe

16 Starnes, and the said Charlie Joe Starnes has also submitted proof of his permanent and total disability since the date of his discharge aforesaid, and also submitted proof that the said Charlie Joe Starnes was unable to follow his former vocation that he had before he entered the United States Navy, that is to say he has been unable to follow same since his discharge from the United States Navy, and has also presented evidence of his total permanent disability from the date of his discharge, as required under the statutes, which proof has been presented to the proper officials of the United States Veterans' Bureau of Washington D. C., and also to the Bureau of War Risk Insurance, and that all of said evidence has been reviewed by the central board of appeals and the advisory board, under the statutes made and provided, and that said central board of appeals and advisory board, after consideration of the evidence on file by the said Charlie Joe Starnes have given him a temporary total rating, but have refused the said Charlie Joe Starnes his right to permanent total disability or his right to claim the monthly installment of fifty-seven and 50/100 dollars, under the terms of his insurance certificate aforesaid, from the date of his discharge June 22nd, 1918.

Complainant further shows, on behalf of the said Charlie Joe Starnes, that the said Charlie Joe Starnes has a wife and two children and is entitled to claim, addition to the sum of fifty-seven and 50/100 (\$57.50) dollars per month under his insurance policy, from the date of his discharge, amounting in the aggregate to four thousand four hundred sixty-five and 83/100 (\$4,465.83) dollars, as aforesaid, the further sum of one hundred (\$100) dollars per 17 month, as compensation, dating from the date of his discharge, June 22nd, 1918, subject, however, to any funds or moneys that the United States Government has paid the said Charlie Joe Starnes under a rating of "temporary total" or "fifty per cent total".

This complainant specifically alleges that the central board of appeals and the advisory board are and were in error in making such awards as affecting temporary disability or fifty per cent disability of the said Charlie Joe Starnes, and are in error in disallowing him his insurance disability rating as being permanent from the date of his discharge, to wit, June 22nd 1918, and that they are

further in error in refusing to grant him compensation as being permanently and totally disabled from the date of his discharge, June 22nd, 1918, and such ruling by said boards is erroneous and contrary to the medical evidence presented to said central board of appeals and advisory board, and is such as to deprive the said Charlie Joe Starnes of his monthly installments of fifty-seven and 50/100 (\$57.50) dollars aforesaid, under the terms of his insurance certificate, as well as his compensation of one hundred (\$100.00) dollars per month, subject to any credits for money paid him by the United States Government, as being permanently and totally disabled from the date of his discharge, as well as incapacitated for following his former vocation from the date of his discharge, and same has the effect annulling all of the rights of the said Charlie Joe Starnes granted to him under said certificate herein sued upon, as well as his right to compensation. and the emoluments he is entitled to

18 thereunder, all of which complainant specifically alleges is contrary to the acts and statutes made and provided and the evidence heretofore presented to the central board of appeals and the advisory board, as aforesaid.

11

That, therefore, in compliance with the Bureau of War Risk insurance act and its amendments, and in view of the disagreement as to the claim for losses and the amount thereof as aforesaid, between the said Bureau of War Risk insurance and the central board of appeals and advisory board and the complainant, on behalf of the said Charlie Joe Starnes, the said Charlie Joe Starnes being the contracting party under the terms of the certificate of insurance aforesaid, as well as for the right of his compensation aforesaid, since the date of his discharge aforesaid, complainant brings this action and claim, on behalf of the said Charlie Joe Starnes, against the United States Government in the District Court of the United States for this district, in accordance with the terms of the law and the statutes above mentioned.

That all and singular these premises are true and within the jurisdiction of the United States and this honorable court, and brought in conformity with the above statutes made and provided.

Wherefore, complainant, the said J. H. Starnes, as next friend for his son the said Charlie Joe Starnes, prays that process may issue in due form of law, citing the United States of America, through its proper officials, as under the terms of the statute of the Bureau of War Risk insurance made and provided in such cases, to appear and answer in the premises, and that said certificate of insurance issued on February 12th 1918, to the said Charlie Joe

19 Starnes, as above set forth, for the sum of ten thousand (\$10,000.00) dollars aforesaid, be decreed to be in full force and effect from the date of its issuance, to wit; February 12th, 1918, and that the said Charlie Joe Starnes be entitled to all the emoluments and privileges thereunder and therein set forth, and that a decree may be entered herein in favor of complainant on behalf of his said son, Charlie Joe Starnes, and as his next friend, in the sum of four thousand four hundred sixty-five and 83/100 (\$4,465.83) dol-

lars, representing seventy-seven and two-thirds ($77\frac{2}{3}$) monthly installments due under the terms of said certificate, with interest thereon, and that there be further judgment against the United States of America for all compensation that might be due the said Charlie Joe Starnes at the rate of \$100.00 per month from the date of his discharge from the United States Navy, to wit; June 22nd 1918, subject to all credits for money that might have been paid to the said Charlie Joe Starnes by the United States of America under the rating of temporary total or fifty per cent total disability, together with the interest thereon and all costs; and that this court will grant to this complainant such other and further relief as to the court under the Statutes may deem legal and right and proper.

(Signed)

LYLE SAXON,
DAVID WUNTCH,

Attorneys for Complainant.

J. H. STARNES,

(Signed),

Complainant.

20 STATE OF TEXAS,
County of Smith:

I, J. H. Starnes, complainant in the above entitled and numbered cause, on behalf of the said Charlie Joe Starnes, being duly sworn depose and say that I have read the foregoing petition against the United States of America and the contents thereof, and all the matters and things therein stated are true and correct.

(Signed)

J. H. STARNES.

Subscribed and sworn to before me, this 1st day of December, A. D. 1924.

[SEAL.]

S. W. COHEN,

Notary Public in and for Smith County, Texas.

THE STATE OF TEXAS,
County of Smith:

J. H. Starnes, being duly sworn, deposes and says that he is a citizen of the United States of America, of the county of Smith, State of Texas, and that he is the plaintiff in the above-named action, acting on behalf of Charlie Joe Starnes, and under the statutes of the State of Texas made and provided, as well as the statutes of the United States he is entitled to commence and maintain the same in said District Court.

He further states the fact to be that because of the poverty of the said Charlie Joe Starnes and his wife and children this action
21 being brought for the benefit of Charlie Joe Starnes, and that he, the said Charlie Joe Starnes, is unable to pay the costs of said action or to give security for same, and that he believes that said Charlie Joe Starnes is entitled to the redress he seeks by such action, and that the nature of his cause of action is correctly and concisely set out in the petition filed in said cause.

He further states that this affidavit is made and filed for the purpose of availing the said Charlie J. Starnes of the rights and privileges in such case provided by the act of Congress, chapter 209,

approved July 20th, A. D. 1922, as amended by act of June 25th, 1910, chapter 435, Statute L. 866.

J. H. STARNES.

Subscribed and sworn to before me by J. H. Starnes and in my presence and by him sworn to this 1st day of December, 1924.

[SEAL.]

S. W. COHEN,

Notary Public in and for Smith County, Texas.

To the honorable judge of said court:

I am one of the attorneys of record of the plaintiff in the cause referred to in the foregoing affidavit. I further state that I have examined said plaintiff's case and believe that he has just cause of action and that the same is substantially as stated in his petition, and I verily believe that because of his poverty the said Charlie Joe Starnes is unable to pay the costs of said action or to give security for the same.

22 I further declare and stipulate that no agreement or understanding has been entered into between said plaintiff and his attorney or counsel for a division, or share of, or interest in, the judgment sought to be recovered, and that no assignment of such judgment shall be made prior to final disposition of this suit either in this court or in the higher courts; and I further stipulate that when judgment is finally obtained the money shall be paid into the registry of the court, there to remain until disposed of by the court, as follows to wit:

First. To the payment of costs.

Second. To the attorney's fees to be fixed by the court.

Third. The remainder to a properly constituted guardian of the said Charlie Joe Starnes.

Respectfully,

DAVID WUNTCH,
Attorney for Plaintiff.

23

Exhibit 2

In the District Court of the United States for the Eastern District of Texas, Tyler Division

CHARLIE JOE STARNES, BY NEXT FRIEND J. W. }

Starnes

vs.

THE UNITED STATES OF AMERICA }

D. L. No. 2690. 73084

MEMORANDUM

The plaintiff here enlisted in the Navy on January 7, 1918, and was discharged on June 22nd thereafter. During that time he procured war-risk insurance to the extent of ten thousand dollars, for which he, through his father as next friend, sues. It is claimed that during the life of this insurance contract he became psychopathic type to an extent that he was and still is and will continue to be an irresponsible person, and was thereafter, and is now, totally and permanently disabled. A claim for compensation is set up in

the petition, but that has been abandoned by the plaintiff, and the suit is for the value of the policy.

The Government denies that he was totally disabled. Among other things it alleges that such disability as now exists is due to a constitutional defect or congenital condition; that his trouble, therefore, did not originate during his service, and, furthermore, is not of a type that will prevent him from pursuing a gainful occupation.

24 There is much testimony on the issue thus raised. I shall not undertake, in this memorandum, to review it in detail. Speaking in general terms, it is shown that the plaintiff, after a physical examination, was considered acceptable for service in the Navy, and that his discharge was on account of his mental condition. At first full compensation, under the provisions of the statute, was allowed him; subsequently, half compensation; and finally, payments were discontinued. During that time unsuccessful attempts at vocational training were made. The reports were not only that vocational training was "not feasible," but that the degree of his vocational handicap is "major." The plaintiff since his discharge has attempted work on his own account, but his efforts proved to be failures—that is, his work was inefficiently done and was continued but a relatively short while. The members of his family and others acquainted with the plaintiff during his boyhood have attested his normal mentality and physical fitness prior to his enlistment and have described symptoms he has manifested since then as disqualifying him for almost any occupation.

I infer from the evidence that his mental ailment can not properly be denominated insanity. The idiosyncrasies or peculiarities of conduct he has displayed are due, according to the physicians who testified for the Government, and whose judgment, in my opinion, is correct, to a constitutional defect. They entertain the belief that he is capable of pursuing such occupations as he could have followed prior to his enlistment. They think, in other words, that his mental condition is such as would likely have developed, in natural order of things, when he matured into manhood, and that it does not entirely destroy his ability to work.

25 I think it is immaterial, as regards the disposition to be made of the case, whether the cause of the plaintiff's plight is congenital or constitutional, or whether it is something that developed in connection with and as a result of the work he did in the Navy. The important point is that during the life of the policy he became disabled, and in that state of affairs the question to be settled is whether the disabilities are "total and permanent" within the meaning of those words as used in the statute. They do not necessarily imply an incapacity to do any work at all. "Total disability is any impairment of mind or body which renders it impossible for the disabled person to follow continually any substantial gainful occupation. It is to be deemed permanent whenever it is founded upon condition which renders it reasonably certain throughout life of person suffering from it."

The policy is a contract. In the consideration of it every reasonable presumption must be indulged in favor of the plaintiff. He was an enlisted man, and the whole scheme of war-risk insurance was designed to benefit men who thus served and who from any

cause during the period of their service became disabled. Great liberality of construction must therefore be indulged. If this plaintiff can be said to have become totally disabled during his service, even though the cause of it may be traced back to remote conditions with which his service had nothing to do, I think he should recover judgment here. The very purpose of the insurance was to protect the service man against such misfortune.

26 The evidence here, in my opinion, shows that the plaintiff can not now engage in any gainful work. He has, as I have indicated, been declared unfit to pursue avocations that he undertook to follow when receiving compensation. His subsequent attempts to work, according to the testimony, proved unsuccessful. The post-master under whom he worked in Oklahoma employed him originally in the stress of necessity; said he discharged him at the first opportunity on account of unsatisfactory and inefficient manner in which he discharged his duties. While his employer in the automobile shop where he seems to have been employed for so long as three months testified that there was no complaint of what he did, I think it appears that he did not make very close observation of the plaintiff's performances. On the other hand, the men who worked with him there said substantially that he was unequal to the tasks assigned to him.

The physicians for the Government expressed the belief that despite these facts he can resume work on a farm and live along in an atmosphere and environment such as he was accustomed to before enlistment. This is necessarily a speculation or opinion on the part of these witnesses, which is worthy of and has been given much consideration. But it may or may not be correct. The evidence of those associated with him in his home is to the effect that he can not do such work; that his frailties of mind and body render such occupation impossible.

So we have a case where the record shows an enlisted man in whose favor a policy of insurance was issued, who was dismissed from service on account of his mental condition, who is unfit for vocational training, who is presently suffering from a condition of mind that, to say the least, "reacts to life as a typical psychopath," and who, until this time, is totally disabled for work.

27 It would be a presumption, unsupported by the testimony, to say that this disability will not be permanent. The whole trend of the evidence is that it will be permanent. If at a later time it should develop that a change has been wrought, that the cloud has been lifted from this man's mind, and that he can perform work, the statutes provides a method by which payments to him, under the policy, may be discontinued. But with the record before the court here it would, in my opinion, be an injustice to him, and would not reflect the spirit of the Government with respect to those present themselves for services in time of national stress and peril, to deny to him now the aid which this policy was designed to render.

Let judgment be prepared, therefore, in favor of the plaintiff.

W. L. ESTES, *Judge*.

TYLER, TEXAS, *May 7th, 1926.*

The attorney for the defendant requested that some additional findings of the fact be made. I am not sure I understand what he has in mind, for I think my holdings with respect to both the law and the facts are set forth in the foregoing memorandum. But with the desire to comply with his request, I state the following

Conclusions of fact

28 The insurance in question was obtained on February 12th, 1918, after this man had been accepted, on January 8 preceding, for service in the Navy. His mental trouble was observed on June 19th, 1918, on which account he was discharged, was stated to be physical disability, psychopathic state. Premiums on the policy were deducted from his salary for each month after the issuance, including the month of June, and the policy would not have lapsed for nonpayment prior to August 1st.

2

I find as a fact that this man is totally and permanently disabled. The malady with which he is suffering is not insanity. I do not find that he has given evidence of psychosis. He is a constitutional psychopath, which condition became apparent during life of the policy and permanently and totally disables him from performing work of any sort to any substantial degree. The experiments at vocational training, the inefficient manner in which he discharged his work as a temporary letter carrier in Ardmore, Oklahoma, from April to June, 1920, his physical and mental symptoms manifested during his employment at a garage in Tyler, attest his incapacity to do sustained labor. He served as a bailiff to the Federal court for about ten days, but that involves no labor and is not regular employment.

Conclusions of law

1

29 The policy having been issued to this man, and his malady having first become apparent during the life of the policy, resulting in permanent and total disability, he is entitled to recover under the provisions of the contract. In that state of affairs, there being no allegation or proof of fraud in the procurement of the contract, judgment should be rendered in his favor on the policy.

W. L. ESTES, *Judge*.

Rule to show cause

Filed April 13, 1927

* * * * *

This cause coming on upon oral application of counsel for petitioner, and the same having been considered together with the allegations of the petition filed herein, it is, by the court, this 13th day of April, A. D. 1927,

Ordered that the respondent, Frank T. Hines, be, and he hereby is, ordered and directed to show cause herein, on or before the 22nd day of April, 1927, why he should not be required by writ of mandamus to rate and pay the petitioner compensation from the date of her discharge from the United States Army to the present date as one permanently and totally disabled within the meaning of the war risk insurance act from following a gainful occupation: Provided a copy of the petition for writ of mandamus herein filed and of this rule be served on the said respondent on or before the 15th day of April, A. D. 1927.

By the court.

F. L. SIDDONS, *Justice.*

30

Marshal's return

Served a copy of the within rule on Frank T. Hines, Director of the U. S. Veterans' Bureau, 4/14/27, personally.

EDGAR C. SNYDER,
U. S. Marshal in and for the Dist. of Columbia.

By JESSE ROBERTS,
Deputy U. S. Marshal.
D. A. R.

Answer of respondent

Filed April 29, 1927

* * * * *

Now comes Frank T. Hines, Director of the United States Veteran's Bureau, now and at all times saving and reserving unto himself all exceptions to the many imperfections, uncertainties, and defects in the petition for the writ of mandamus filed herein, and reserving unto himself all benefits of the lack of jurisdiction of the court appearing upon the fact of said petition, to grant the relief prayed for and the lack of jurisdiction of the court to direct him, as Director of the United States Veterans' Bureau, to perform the acts in question, and relying upon the same as if demurrer had been specifically interposed for answer to said petition and to the rule to show cause issued thereon or so much thereof as is material for him to answer, answering says:

I

31 Respondent admits the petitioner is the legally appointed and duly qualified committee of the estate and person of Charlie Joe Starnes, and that he brings suit as committee of the said Charlie Joe Starnes aforesaid. The respondent says that he is without sufficient information upon which to form a belief as to the residence of said Charlie Joe Starnes, and therefore denies same.

II

Answering paragraph two, respondent admits that he is the Director of the United States Veterans' Bureau, and as such officer of the United States resides in and exercises his official functions in the District of Columbia.

Further answering the allegations of paragraph two, respondent is advised that the remaining allegations are conclusions of law which he is not required to answer.

III

Respondent admits that on, to wit, in the month of January, 1918, said Charlie Joe Starnes enlisted as a seaman of the second class in the United States Navy; that he served continuously from said date until the 22nd day of June, 1918. The respondent denies each and every other allegation contained in paragraph three.

Further answering the allegations of paragraph three, the respondent says that in June, 1918, said Charlie Joe Starnes came before a board of medical survey, Department of the Navy, United States of America, for examination and observation for the purpose of determining the desirability of permitting him to continue in the United States naval service; that on, to wit, the 19th day of June, 1918, said board of medical survey recommended the discharge of said Charlie

32 Joe Starnes because he was found unfit for service on account of a constitutional psychopathic state without psychosis, not in line of duty; that thereafter on, to wit, the 22nd day of June, 1918, said Charlie Joe Starnes was discharged from the naval service and issued an ordinary discharge by reason of physical disability not incurred in line of duty; that on, to wit, the 22nd day of July, 1922, the Judge Advocate General of the Navy rendered a decision which resulted in the discharge being changed to "line of duty."

IV

Respondent is advised that the allegations of paragraph four recite a statute which he is not required to answer.

V

Respondent denies each and every allegation contained in paragraph five.

Further answering said paragraph five, respondent says that the said Charlie Joe Starnes filed a claim with the Bureau of War Risk Insurance on September 8, 1920; that on October 13, 1920, he was admitted to the United States Veterans' Hospital # 25 for the purpose of diagnosis; that on November 24, 1920, condition of said Charlie Joe Starnes was rated by the medical division, neuropsychiatric section, Bureau of War Risk Insurance, as no per cent (less than ten per cent) from discharge with the finding that his condition existed prior to date of enlistment and was not aggravated by his service; that on December 1, 1920, he was examined by Dr. Guy F. Witt, Public Health Service, and his condition diagnosed as psychopathic personality; that on May 24, 1921, his condition was rated
33 by the said medical division, neuropsychiatric section, as less than ten per cent, to October 13, 1920, temporary total during hospitalization, service connected, constitutional psychopathic state, with symptoms that were due to psychotic episodes while in the Navy; that on June 14, 1921, his condition was rated by the said medical division as less than ten per cent from date of

discharge to October 13, 1920, as temporary total from October 13, 1920, to May 18, 1921, twenty-five per cent from May 18, 1921, dementia præcox, service connected; that on June 30, 1921, his condition was rated by the said medical division as less than ten per cent from date of discharge to October 13, 1920, total temporary from October 14, 1920, to May 18, 1921, twenty-five per cent from May 18, 1921, dementia præcox (?), competent; that on July 14, 1921, said Charlie Joe Starnes was rated by the said medical division as less than ten per cent from date of discharge to October 13, 1920, temporary total from October 13, 1920, to May 18, 1921, fifty per cent from May 18, 1921, dementia præcox, incident to service; that on November 2, 1921, the condition of the said Charlie Joe Starnes was rated by the medical division, United States Veterans' Bureau, as fifty per cent, temporary partial continued, with a change in diagnosis from dementia præcox to constitutional psychopathic inferiority; that on January 20, 1922, the condition of the said Charlie Joe Starnes was rated by the central office board of appeals as fifty per cent, temporary partial continued, with a diagnosis of constitutional psychopathic inferiority, competent, held to have originated in the service under section 300 of the war risk insurance act; that said rating continued until July 10, 1922.

34

VI

Respondent denies each and every allegation contained in paragraph six.

Further answering said paragraph six, respondent says that he was not the director of the United States Veterans' Bureau on July 8, 1922, not having entered upon his present public duties until March 3, 1923; and says that the acts set forth in the allegations in this paragraph were performed by the respondent's predecessor in office, Charles R. Forbes, by and through his duly authorized subordinates, in the manner fully set forth below; that on, to wit, the 10th day of July, 1922, the board of appeals convened at Dallas, Texas, and rated the condition of the said Charlie Joe Starnes as one of constitutional psychopathic inferiority and as having existed prior to enlistment, not noted at the time of enlistment nor aggravated in or by his service; that subsequent to the said date of July 10, 1922, on, to wit, July 26-27, 1922, said Charlie Joe Starnes was examined by Doctors D. Percy Hickling, neurologist, and A. E. Marlin, neuropsychiatrist; that on August 9, 1922, a special board of three psychiatrists examined the said Charlie Joe Starnes.

The respondent further says that his predecessor in office, Charles R. Forbes, caused the said Charlie Joe Starnes to be frequently examined by psychiatrists, and caused reviews of said examinations, with the result that on August 16, 1922, the condition of the said Charlie Joe Starnes was rated by the central office board of appeals, which rating confirmed the opinion of the board of appeals which convened at Dallas, Texas, dated July 10, 1922, as above set

35 forth, holding that the condition of the said Charlie Joe Starnes was one of constitutional psychopathic inferiority, and as having existed prior to enlistment, not noted at the time of enlistment nor aggravated in or by his service; that on October 4, 1922, said Charlie Joe Starnes was again rated and no change in his

condition found; that on January 25, 1923, said Charlie Joe Starnes was again rated, with like result, all of which action above set forth was the action of your respondent's predecessor in office.

VII

Respondent admits that a suit was filed by said Charlie Joe Starnes in the District Court of the United States in the form, on the date, and in the place alleged in this paragraph, and that the court rendered an opinion in said suit, all as evidenced by the copies of the declaration, memorandum opinion, conclusions of fact, and conclusions of law in said suit attached to the petition herein and expressly made a part thereof; the respondent admits that the United States of America denied the material averments of said declaration and that trial by jury was waived and the case submitted to the court for decision, and admits that judgment in favor of plaintiff has been paid. Respondent denies that the court found the averments of the declaration to have been proved by the evidence; denies that the court found or the judgment in said suit held that Charlie Joe Starnes had been, since the 22nd of June, 1918, and continuously since that time, totally and permanently disabled from following a gainful occupation by reason of injuries sustained, ailments, and diseases suffered and contracted by petitioner in
36 said service of the United States; denies each and every other allegation of paragraph seven.

Further answering said paragraph seven the respondent says that the allegations of the declaration in the suit on the insurance contract, to wit, that the diseases, ailments, etc., of the plaintiff were brought about while the plaintiff was in the naval service, were abandoned by motion of the plaintiff and allowed by the court, as more fully appears in the memorandum opinion, conclusions of fact, and conclusions of law attached to the petition herein and made a part thereof. In said memorandum opinion the court found:

"I think it is immaterial as regards the disposition to be made of the case, whether the cause of the plaintiff's plight is congenital or constitutional, or whether it is something that developed in connection with and as a result of the work he did in the Navy."

In the conclusions of fact Mr. Justice Estes said:

"I find as a fact that this man is totally and permanently disabled. The malady with which he is suffering is not insanity. I do not find that he has given evidence of psychosis. He is a constitutional psychopath, which condition became apparent during life of the policy and permanently and totally disables him from performing work of any sort to any substantial degree."

And as a conclusion of law, he said:

"The policy having been issued to this man and his malady having first become apparent during the life of the policy resulting in permanent and total disability, he is entitled to recover under the provisions of the contract."

VIII

Respondent denies each and every allegation of paragraph eight.

IX

Respondent denies each and every allegation of paragraph nine.

X

Respondent admits that he has refused and still refuses to pay to the said Charlie Joe Starnes or to allot to his dependents the said sum of one hundred dollars (\$100.00) per month or any sum as compensation, but denies that said refusal is arbitrary or capricious. Each and every other allegation of paragraph ten is denied.

Further answering, your respondent says (a) that on, to wit, March 3, 1923, your respondent assumed his present public duties; that on March 13, 1923, the case of Charlie Joe Starnes was called to the respondent's attention when he addressed a communication to the said Charlie Joe Starnes at Tyler, Texas, advising him that his case would be called to Washington for review in connection with his appeal; that on April 3, 1923, the claims file in the case of the said Charlie Joe Starnes was sent for by special-delivery letter; that on May 23, 1923, the condition of the said Charlie Joe Starnes was again rated by the central office board of appeals, which rating confirmed the action of the board of appeals which convened at Dallas, Texas, previously referred to herein, of July 10, 1922. (The claims file of the said Charlie Joe Starnes was forwarded to the regional office of the bureau at Dallas, Texas, in the regular course of business.) That on August 17, 1923, the said Charlie Joe Starnes personally appeared before the board of appeals of District #14 at Dallas, Texas, and the decision of that board as to his condition continued the rating theretofore given him (May 23, 1923) by the central office board of appeals; that on September 5, 1923, the claims file of the said

Charlie Joe Starnes was recalled to the central office of the bureau at Washington from the regional office of the bureau at Dallas; that on October 3, 1923, the claim of the said Charlie Joe Starnes was again reviewed by the central office board of appeals, which board reviewed the evidence in file and continued in effect the opinion of May 23, 1923, to wit, as follows: "Constitutional psychopathic inferiority, not due to service; congenital"; that subsequent to October 3, 1923, and prior to February 18, 1927, the claim of the said Charlie Joe Starnes was reviewed and rereviewed on many occasions with the same result as the last-mentioned rating of October 3, 1923, indicates; that on February 18, 1927, the respondent wired for the claimant's file to be forwarded to central office, the file having been forwarded to the field office of the bureau in the regular course of business; that on February 24, 1927, the respondent ordered a personal hearing to be held February 25 or 26, 1927, at which time certain representatives of the claimant were to be present; that on February 26, 1927, the hearing was held, at which the claimant appeared in person; that on March 8, 1927, after consideration of all the evidence produced in the aforementioned hearing and careful review of the file, the advisory group on appeals denied the appeal of the claimant and held that the said Charlie Joe Starnes did not have a service-connected, compensable disability; that on March 22, 1927, the respondent ordered an examination of the said Charlie Joe Starnes by a board of five psychiatrists; that said board was com-

posed of Doctors J. Duerson Stout, R. K. Foxwell, John A. Nelson,
H. W. Baxley, and Delmer Goode, who examined said Charlie
39 Joe Starnes, and on March 24, 1927, rendered an unanimous
opinion holding that the patient was primarily a constitu-
tional psychopath, without psychosis, that there was no evidence of
organic disease, and that no neuropsychiatric disability was found
to exist at the time of the examination; that on March 31, 1927,
respondent instructed the advisory group on appeals to again review
the claim of the said Charlie Joe Starnes; that on April 4, 1927, the
advisory group on appeals recommended to the respondent that he
approve the findings of the special board of examining psychiatrists,
and further recommended that he approve the opinion of the advisory
group dated March 8, 1927; that on April 4, 1927, the respondent
approved the recommendations of the advisory group on appeals, and
determined that the said Charlie Joe Starnes' condition was not in-
curred, increased, or aggravated in the naval service; and that com-
pensation was not payable. (b) The respondent further says that
the aforesaid reviews of the claim of the said Charlie Joe Starnes
for disability compensation and the evidence in connection therewith
was made, and the action thereon was taken, pursuant to the authority
conferred by law and particularly by section 305, war risk insurance
act (40 Stat. 407), and section 205, World War veterans' act, 1924, as
amended (43 Stat. 622), and says that the questions of allowance,
termination, diminishing, refusal, or increase in compensation are by
law left to the decision of the Director of the United States Veterans'
Bureau, and his decisions on same are by law made conclusive, his
function being discretionary and in no sense ministerial.

Wherefore, having fully answered the allegations of the petition,
respondent prays the court that the rule to show cause be dis-
40 charged, the petition dismissed, and the respondent allowed
his reasonable costs.

FRANK T. HINES,
Director, United States Veterans' Bureau.

PEYTON GORDON,
United States Attorney.

LEO A. ROVER,
Assistant United States Attorney.

Of Counsel:

JAMES O'C. ROBERTS,
Acting General Counsel, U. S. Veterans' Bureau.

JAMES T. BRADY,
Attorney, U. S. Veterans' Bureau.

A. HINDERLITER,
Attorney, U. S. Veterans' Bureau.

I, Frank T. Hines, Director of the U. S. Veterans' Bureau, do
solemnly swear that I have read the foregoing answer by me sub-
scribed and know the contents thereof; that the matters and things
therein stated of personal knowledge are true and those stated on
information and belief I believe to be true.

FRANK T. HINES.

Subscribed and sworn to before me this 28th day of April, A. D.
1927.

[NOTARIAL SEAL.]

MATILDA REDEKER,
Notary Public.

41 *Motion for issuance of writ notwithstanding respondent's answer to rule*

Filed May 3, 1927

* * * * *

Now comes the petitioner by his attorneys, R. H. McNeill and J. W. Maher, and moves the court to direct the issuance of the writ of mandamus herein notwithstanding the allegations of the answer filed by respondent.

Respectfully submitted.

R. H. McNEILL,
J. W. MAHER,
Attorneys for Petitioner.

NOTE

1. Petitioner will contend, in presenting this motion, that the essential averments of his petition are, in law, admitted, and that on said petition and the answer thereto he is entitled to the relief prayed for.

2. Petitioner will further contend that the respondent is bound, as matter of law, by the decision of the district court of the State of Texas in passing upon the issues raised in that proceeding and that the findings of said court are res adjudicata and that the legal effect of said decision precludes the respondent herein any right to determine petitioner's state of disability or the origin thereof contrary to the findings of said district court.

3. Petitioner will also contend from the petition and answer that the respondent is bound by the final decision of the Navy Department, under which said department he served and in which service
42 he acquired his existing disabilities, said decision, in legal effect, being that his said disabilities were acquired in the service of the United States while in said Navy Department, and respondent is precluded from reaching any contrary opinion upon alleged ex parte reports or findings subsequent to petitioner's discharge from said service.

To LEO A. ROVER, Esq., WILLIAM WOLFE SMITH, Esq.,

Attorneys for Respondent:

Take notice that the above motion will be called to the attention of the court on Friday, May 6th, 1927, at 10 o'clock a. m.

R. H. McNEILL,
J. W. MAHER,

Attorneys for Petitioner.

Service of a copy of the above motion acknowledged this _____ day of May, 1927.

NEIL BURKINSHAW,
Assistant U. S. Attorney,
Attorney for Respondent.

Memorandum on submission after hearing on petitioner's motion for issuance of writ notwithstanding the respondent's answer to rule

Filed June 24, 1927

* * * * *

The pending motion is the equivalent of asking for a judgment on petition and answer, and will be so treated.

43 The case, in its essential features, is not different from that of the case of Jack Floyd Welch, against the present respondent, now on its way to the Court of Appeals. In this case much reliance is placed by the petitioner on the judgment of the Federal court in and for the eastern district of Texas, Tyler division, which was an action brought by the present petitioner, through his next friend, against the United States, on a policy of insurance issued to him by the United States. There are some additional features in the pending case not presented by the Welch case, upon which the petitioner also relies, but in view of the fact that a great deal of reliance in this case is placed by the petitioner on the judgment of the Federal court mentioned, it presents, in that aspect, the same question which will be the subject of appellate review in the Welch case, and the court, without going further, but pro forma, and in order to expedite appellate review, will grant a writ of mandamus requiring the respondent to rate the petitioner as permanently and totally disabled, but will not direct the payment to the petitioner or an allotment of any compensation as prayed for. The court does this because it has been informed by the counsel that an appeal will be taken from whatever judgment is entered in the case.

An order conforming to the foregoing will be settled and signed upon notice.

F. L. SIDDONS, *Justice.*

JUNE 23, 1927.

44

Stipulation

Filed July 21, 1927

* * * * *

It is hereby stipulated between counsel for petitioner and the respondent that his honor, Mr. Justice Frederick L. Siddons, who heard the argument herein, may sign an appropriate order herein, which is herewith submitted by the petitioner and approved as to form by the defendant, notwithstanding the fact that said justice is without the jurisdiction of the court at the time of said signing.

R. H. McNEILL,
Attorney for Petitioner.
PEYTON GORDON,
R.,
Attorney for Defendant.

Final order

Filed July 21, 1927

* * * * *

This cause coming on to be heard upon the petition for writ of mandamus and the rule to show cause thereon issued, the answer of the respondent to said petition and rule, and the motion of the petitioner for the issuance of a writ of mandamus notwithstanding the answer filed by the respondent, and the said motion having been argued in open court by the respective counsel of record, it is, by the court, after consideration, this 18th day of July, A. D. 1927,

Ordered, that a writ of mandamus issue herein requiring the respondent, Frank T. Hines, the Director of the United States Veterans' Bureau, to rate Charlie Joe Starnes as one permanently
45 and totally disabled within the meaning of the World War veterans' act, for the purpose of compensation, and as having been permanently and totally disabled for the purpose of compensation from the 22nd day of June, 1918, to the 13th day of April, 1927.

By the court.

F. L. SIDDONS, *Justice.*

No objection as to form:

LEO A. ROVER,
Assistant U. S. Attorney.

From the foregoing final order the respondent notes an appeal to the Court of Appeals of the District of Columbia.

F. L. SIDDONS, *Justice.*

Assignment of Errors

Filed August 3, 1927

* * * * *

Now comes the respondent, Frank T. Hines, Director of the United States Veterans' Bureau, by Peyton Gordon, United States Attorney in and for the District of Columbia, his attorney, and assigns as error herein the following:

1. The court erred in not dismissing the petition of mandamus.
2. The court erred in directing that the writ of mandamus issue requiring the defendant to rate petitioner as permanently and totally disabled for compensation purposes.
- 46 3. The court erred in entering the final order herein granting the relief prayed.

PEYTON GORDON,
United States Attorney,

LEO A. ROVER,
Assistant United States Attorney,
Attorneys for Respondent.

Service of copy of the foregoing assignment of errors acknowledged this 3rd day of August, A. D. 1927.

R. H. MCNEILL &
JNO. W. MAHER,
Attorneys for Petitioner.

Designation of record

Filed August 3, 1927

* * * * *

The clerk will please include in the transcript of record on appeal to the Court of Appeals of the District of Columbia the following:

1. Petition and rule to show cause.
2. Answer of respondent.
3. Motion for issuance of writ notwithstanding the answer.
4. Memorandum opinion of court.
5. Stipulation of counsel.
6. Final order.
7. Assignment of errors.
8. This designation.

PEYTON GORDON,
United States Attorney.

LEO A. ROVER,
Assistant United States Attorney.

47 Service of copy of the foregoing designation of record acknowledged this 3rd day of August, A. D. 1927.

R. H. McNEILL &
JNO. W. MAHER,
Attorneys for Petitioner.

48 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 47, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 73084 at law, wherein J. H. Starnes, committee of the estate and person of Charlie Joe Starnes, is petitioner, and Frank T. Hines, Director of the United States Veterans' Bureau, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 9th day of January, 1928.

[SEAL.]

FRANK E. CUNNINGHAM, *Clerk.*

[Indorsement on cover:] District of Columbia Supreme Court. No. 4702. Frank T. Hines, director, &c., appellant, vs. J. H. Starnes, committee, &c. Court of Appeals, District of Columbia. Filed Jan. 10, 1928. Henry W. Hodges, clerk.



FOR THE COURT OF APPEALS

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

FILED - 1928

Henry H. Starnes

In the Court of Appeals of the District
of Columbia

JANUARY TERM, 1928

No. 4702

FRANK T. HINES, DIRECTOR OF THE UNITED STATES
VETERANS' BUREAU, APPELLANT

v.

J. H. STARNES, COMMITTEE OF THE ESTATE OF
CHARLIE JOE STARNES, APPELLEE

BRIEF FOR THE APPELLANT

PEYTON GORDON,

United States Attorney,

LEO A. ROVER,

Assistant United States Attorney.

WILLIAM WOLFF SMITH,

JAMES O'C. ROBERTS,

ANNABEL HINDERLITER,

Of Counsel.

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**In the Court of Appeals of the District
of Columbia**

JANUARY TERM, 1928

No. 4702

FRANK T. HINES, DIRECTOR OF THE UNITED STATES
Veterans' Bureau, appellant

v.

J. H. STARNES, COMMITTEE OF THE ESTATE OF
Charlie Joe Starnes, appellee

BRIEF FOR THE APPELLANT

STATEMENT OF THE CASE

This is mandamus proceeding brought by J. H. Starnes, Committee of the estate of Charlie Joe Starnes, plaintiff below, for the purpose of compelling the appellant, the Director of the United States Veterans' Bureau, defendant below, to rate the said Charlie Joe Starnes for compensation purposes as permanently and totally disabled from June, 1918, to April, 1927.

The petition for writ of mandamus in substance states (R. 1) that in the month of January, 1918, Charlie Joe Starnes (hereinafter referred to as the appellee), enlisted as a seaman in the United States Navy and served therein until the 22nd day of June, 1918, when he was honorably discharged because of his physical inability to continue therein, with a physician's certificate of disability for disabilities incurred in line of duty, and because of the peculiar hardships of the service and because of an accident which befell the petitioner while in the service without misconduct on his part, willful or otherwise, and by reason of said disabilities the said appellee became, prior to the 22nd day of June, 1918, permanently and totally disabled from following continuously any occupations of a substantially gainful nature, which said state of permanent and total disability continues to the present time; that on the 25th day of May, 1921, and on divers other dates since that day, to the 8th day of July, 1922, the Bureau of War Risk Insurance, acting through its Director and Assistant Directors, in the exercise of their discretion so to do, has, on the facts and evidence submitted to it, held that the injuries, diseases, and ailments from which said Charlie Joe Starnes suffers, and by reason of which he is permanently and totally disabled, are compensable, and that said diseases and ailments were not contracted by reason of the willful misconduct of the appellee and were diseases and ailments

which rendered the appellee totally disabled from following any gainful occupation, which said facts and conclusions are and continuously have been admitted by the appellant and his predecessors in office by whose actions and findings, in the absence of fraud, appellant is bound finally and conclusively; that four years after appellee's discharge from the United States Navy and without affording appellee medical examination, and without any reason whatsoever, the appellant discontinued the compensation heretofore awarded and paid by him to the appellee, and held as a fact that said disabilities existed prior to enlistment of the appellee in the navy, were not incurred by the appellee in the service and were not aggravated by the service, which said finding appellee denounces as an arbitrary exercise of the discretionary authority reposed in the appellant.

That on the 2d day of December, 1924, appellee instituted a suit against the United States of America in the United States District Court for the Eastern District of Texas, Tyler Division, on his contract of War Risk insurance with the United States, alleging that said insurance had matured by reason of his having become on the 22d day of June, 1918, and having been continuously since said date, permanently and totally disabled due to injuries suffered and diseases and ailments contracted while in the United States Navy; that the United States of America denied the averments of said declaration; that issue was joined thereon and the Court

found said averments to have been proven as alleged, and that the United States of America subsequently paid the judgment awarded appellee by the said Court in said action; that the said Court in the suit on the War Risk insurance contract, by its opinion and judgment, found that the appellee, when he was discharged from the United States Navy and continuously since said date, had been suffering from a mental disease which had rendered, and now renders, him permanently and totally disabled from the 22d day of June, 1918, from following any gainful occupation, and that the diseases or ailments so determined by the Court as total and permanent is the identical disability held by the appellant to have existed prior to his enlistment in 1918; that by reason of the verdict and judgment of the Court in the said law cause, it becomes and is the duty of the appellant to rate the appellee as one permanently and totally disabled and to pay to him, or by allotment to his dependents, the sum of \$100.00 a month for each and every month from June 22, 1918; yet, notwithstanding the clear duty of the appellant, he being without any discretion in the premises by reason of the verdict of the Court aforesaid, and the prior determination of the appellant, appellant has arbitrarily, capriciously and finally refused to recognize the appellee as one permanently and totally disabled, and has refused to pay to the appellee, or allot to his dependents, the sum of \$100.00 per month because of the disability aforesaid.

The Court below thereupon issued a rule on the appellant directing him to show cause on or before the date named therein, why the writ of mandamus should not issue and the prayers of the petition be granted. (R. 15.)

The appellant duly filed his return to the said rule to show cause and his answer to said petition (R. 16), admitting that he was the Director of the United States Veterans' Bureau, and that the appellee enlisted and served in the United States Navy as alleged. Appellant denied that the appellee was discharged from the naval service because of—

disabilities incurred due to peculiar hardships of the service and because of the accident which befell petitioner while so engaged in the active service of the United States Navy and that by reason of said disabilities he became prior to the 22d day of June, 1918, permanently and totally disabled from following continuously or at all any occupation of a substantially gainful nature;

denied that the appellee became permanently and totally disabled from June 22, 1918, and that he so continues to the present time. Appellant, in and by his answer, showed that in June, 1918, the appellee came before a board of medical survey of the Navy Department for examination in order to determine whether he was fit to continue in the United States naval service; that on the 19th day of June, 1918, said board recommended the discharge of appellee, finding him unfit for service on account of a constitutional psychopathic state, without psy-

chosis, not in line of duty; that thereafter, on the 22nd day of June, 1918, the appellee was discharged from the naval service and issued an "ordinary discharge" by reason of physical disability not incurred in line of duty, that on July 22, 1922, the Judge Advocate General of the Navy rendered a decision which resulted in the discharge being changed to "line of duty."

Appellant, in his answer, further showed that the appellee filed his claim with the Bureau on September 8, 1920; that he was thereafter hospitalized by the Bureau and that he was examined by Bureau officials a number of times; and that the appellee was paid compensation by the Bureau on the basis of the examinations and the ratings given him from time to time by said officials until the appellant's predecessor in office caused the appellee to be examined by medical experts which resulted in the Bureau on August 16, 1922, holding that the condition of the said appellee was one of constitutional psychopathic inferiority and as having existed prior to enlistment and not aggravated in or by the service; that on October 4, 1922, the appellee was again examined and rated by the proper officials of the Bureau and no change in his condition found; that on January 25, 1923, the appellee was again so rated, with a like result. Appellant further showed that on March 3, 1923, he assumed his public duties as Director of the United States Veterans' Bureau; that on March 13, 1923, he advised the appellee that his case would be reviewed by the proper officials

of the Bureau; that on May 23, 1923, the appellee's case was again so reviewed and the previous action of the Bureau was confirmed; that on August 17, 1923, the appellee appeared before the Bureau's Board of Appeals at Dallas, Texas, and the said Board confirmed the previous action taken by the Bureau on appellee's claim; that on October 3, 1923, the appellee's claim was again reviewed by the Central Office Board of Appeals of the Bureau which confirmed the last previous action of the Bureau.

Appellant further showed that the claim of the appellee was reviewed and re-reviewed on many occasions by the proper Bureau officials with the same result as the last above mentioned; that on February 26, 1927, the appellee was given a hearing by the Bureau, at which he appeared in person, and on March 28, 1927, after considering the evidence the Bureau denied the claim of the appellee; that on March 22, 1927, appellant ordered an examination to be made of appellee by a board of five psychiatrists who rendered a unanimous opinion holding that the appellee was primarily a constitutional psychopath, without psychosis; that there was no evidence of the appellee having any organic disease, and that appellee had no neuropsychiatric disability at the time of the examination; that thereafter appellant again directed a review to be made of the appellee's case and, after recommendations were duly made in reference thereto, he reviewed the

said claim and approved the findings of the special board of examining psychiatrists and held that the appellee's condition was not incurred, increased, or aggravated in the Naval service, and that appellee was not entitled to compensation.

Appellant further showed by his return and answer that the reviews made and action taken by him and his predecessor in office was taken pursuant to the authority conferred by law. The appellant admitted that a suit was filed by the appellee against the United States of America in the United States District Court, on appellee's War Risk insurance contract, and that the Court rendered judgment therein in favor of the appellee but he denied that the Court found the averments of the declaration in said suit to be proven by the evidence. He denied that the Court found or that the judgment in the said suit held that the appellee had been since the 22d day of June, 1918, and continuously since that time, totally and permanently disabled from following any gainful occupation by reason of injuries sustained or disease suffered and contracted in the United States naval service. The appellant further showed by his return and answer that the allegations of the declaration in said law suit that the diseases, ailments, etc. of the appellee were brought about while the appellee was in the naval service, were abandoned and stricken from said declaration on motion of the appellee. Appellant pointed out in his return and answer that the

Judge of the said District Court, in his opinion expressly stated:

I think it is immaterial as regards disposition to be made of the case whether the cause of the plaintiff's plight is congenital or constitutional or whether it is something that developed in connection and as a result of the work he did in the Navy (R. 13);

that in the conclusions of fact the said Court found:

I find as a fact that this man is totally and permanently disabled. The malady with which he is suffering is not insanity. I do not find that he has given evidence of psychosis; he is a constitutional psychopath, which condition became apparent during the life of the policy and permanently and totally disabled him from performing work of any sort to any substantial degree;

and in its conclusion of law the Court said:

The policy having been issued on this man and his malady having first become apparent during the life of the policy resulting in permanent and total disability, he is entitled to **recover under the provisions of the contract.**" (R. 15.)

The appellant admitted that he refused and still refuses to pay the appellee the sum of \$100.00 per month, or any sum, as compensation, but he denied that his refusal is arbitrary or capricious, but averred that the question of allowance, termination, diminishing, refusal or increase in compensation are by law left to his decision, as Director of the

United States Veterans' Bureau, and that his decisions in reference thereto are by law made final and conclusive, and that his functions are discretionary and in no sense ministerial.

After appellant filed his return and answer herein the appellee filed a motion for issuance of the writ of mandamus notwithstanding the appellant's answer to the rule, on three grounds of which the two principal are: (1) That the decision of the District Court of the State of Texas in passing upon the issues raised in said law cause on the contract of insurance and the findings of the said District Court are *res judicata*, and that the legal effect of said decision precludes the appellant from any right to determine appellee's state of disability or the origin thereof, contrary to the findings of the said District Court; (2) that the appellant is bound by the final decision of the Navy Department under which Department appellee served and in which service he acquired his existing disabilities, said decision in legal effect being that his disabilities were acquired in the service of the United States while in the Navy, and appellant is precluded from reaching any contrary opinion upon the alleged ex parte reports of findings subsequent to appellee's discharge from the service. (R. 22.)

Thereafter the Court below filed a memorandum opinion stating that:

The case in its essential features is not different from that of the case of Jack Floyd Welch against the present respondent,

now on its way to the Court of Appeals. In this case reliance is placed by the petitioner on the judgment of the Federal Court in and for the Eastern District of Texas, Tyler Division, which was an action brought by the present petitioner through his next friend against the United States on a policy of insurance issued to him by the United States. There are some additional features in the pending case not presented by the Welch case upon which the, petitioner also relies, but in view of the fact that a great deal of reliance in this case is placed by the petitioner on the judgment of the Federal Court mentioned, it presents, in that aspect, the same question which will be the subject of appellate review in the Welch case, and the Court, without going further, but pro forma, and in order to expedite appellate review, will grant a writ of mandamus requiring the respondent to rate the petitioner as permanently and totally disabled, but will not direct the payment to the petitioner or an allotment of any compensation as prayed for. The Court does this because it has been informed by the counsel that an appeal will be taken from whatever judgment is entered in the case. (R. 23.)

Thereafter, on the 18th day of July, 1927, the following Final Order was entered in this case:

FINAL ORDER

This cause coming on to be heard upon the petition for Writ of Mandamus and the Rule to Show Cause thereon issued, the Answer

of the Respondent to said Petition and Rule, and the Motion of the Petitioner for the Issuance of the Writ of Mandamus notwithstanding the Answer filed by the Respondent, and the said Motion having been argued in open Court by the respective counsel of record, it is, by the Court, after consideration, this 18th day of July, A. D., 1927:

ORDERED that a Writ of Mandamus issue herein requiring the Respondent, Frank T. Hines, the Director of the U. S. Veterans' Bureau, to rate Charlie Joe Starnes as one permanently and totally disabled within the meaning of the World War Veterans' Act for the purpose of compensation, and as having been permanently and totally disabled for the purpose of compensation from the 22d day of June, 1918, to the 13th day of April, 1927. (R. 24.)

From the above-quoted Final Order the case is here on appeal.

ASSIGNMENT OF ERRORS

1. The Court erred in not dismissing the petition of Mandamus.
2. The Court erred in directing that the Writ of Mandamus issue requiring the defendant to rate petitioner as permanently and totally disabled for compensation purposes.
3. The Court erred in entering the Final Order herein granting the relief prayed.

PERTINENT STATUTORY PROVISIONS

The basic law out of which all benefits either of compensation, so called, or under a contract of War Risk Insurance, so called, flow, was enacted on October 6, 1917 (40 Stat. 398), and with various amendments and codifications has been brought down to date and is now known as the World War Veterans' Act, 1924, as amended. The original law provided an additional benefit known and designated as allotment and allowance, but with that feature we are not here concerned. The Act was originally and is now divided into several articles or titles, one containing general provisions, another containing compensation, another containing insurance provisions, and still others containing provisions which are not here material.

General Provisions

The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act, and all decisions of questions of fact affecting any claimant to the benefits of Titles II, III, or IV of this Act, shall be conclusive except as otherwise provided herein. (Section 5, World War Veterans' Act, June 7, 1924; 43

Stat. 608. The War Risk Insurance Act contained a similar provision—Section 13, Act of October 6, 1917; 40 Stat. 399.)

Compensation Provisions

For death or disability resulting from personal injury suffered or disease contracted in the military or naval service on or after April 6, 1917, and before July 2, 1921, or for an aggravation or recurrence of a disability existing prior to examination, acceptance, and enrollment for service, when such aggravation was suffered or contracted in, or such recurrence was caused by, the military or naval service on or after April 6, 1917, and before July 2, 1921, or by any commissioned officer or enlisted man, or by any member of the Army Nurse Corps (female), or of the Navy Nurse Corps (female), when employed in the active service under the War Department or Navy Department, the United States shall pay to such commissioned officer or enlisted man, member of the Army Nurse Corps (female), or of the Navy Nurse Corps (female), or women citizens of the United States who were taken from the United States by the United States Government and who served in base hospitals overseas, or, in the discretion of the Director, separately to his or her dependents, compensation as hereinafter provided; but no compensation shall be paid if the injury, disease, aggravation, or recurrence has been caused by his own willful misconduct: *Provided*, That no person suffering from

paralysis, paresis, or blindness shall be denied compensation by reason of willful misconduct, nor shall any person who is helpless or bedridden as a result of any disability be denied compensation by reason of willful misconduct. That for the purposes of this Act every such officer, enlisted man, or other member employed in the active service under the War Department or Navy Department who was discharged or who resigned prior to July 2, 1921, and every such officer, enlisted man, or other member employed in the active service under the War Department or Navy Department on or before November 11, 1918, who on or after July 2, 1921, is discharged or resigns, shall be conclusively held and taken to have been in sound condition when examined, except as to defects, disorders, or infirmities made of record in any manner by proper authorities of the United States at the time of, or prior to, inception of active service, to the extent to which any such defect, disorder, or infirmity was so made of record:

Provided, That an ex-service man who is shown to have or, if deceased, to have had, prior to January 1, 1925, neuropsychiatric disease and spinal meningitis, an active tuberculosis disease, paralysis agitans, encephalitis lethargica, or amoebic dysentery developing a 10 per centum degree of disability or more in accordance with the provisions of subdivision (4) of section 202 of this act, shall be presumed to have acquired his disability in such service between April 6, 1917,

and July 2, 1921, or to have suffered an aggravation of a preexisting neuropsychiatric disease and spinal meningitis, tuberculosis, paralysis agitans, encephalitis lethargica, or amœbic dysentery in such service between said dates, and said presumption shall be conclusive in cases of active tuberculosis disease and spinal meningitis, but in all other cases said presumption shall be rebuttable by clear and convincing evidence; but nothing in this proviso shall be construed to prevent a claimant from receiving the benefits of compensation and medical care and treatment for a disability due to these diseases of more than 10 per centum degree (in accordance with the provisions of subdivision (4) of section 202 of this Act) on or subsequent to January 1, 1925, if the facts in his case substantiate his claim. (Section 200, World War Veterans' Act, 1924, as amended; 44 Stat. 793. The basic section appears in War Risk Insurance Act—Section 300 Act of October 6, 1917; 40 Stat. 405.)

* * * *A schedule of ratings of reductions in earning capacity from injuries or combinations of injuries shall be adopted and applied by the bureau. Ratings may be as high as 100 per centum. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations similar to the occupation of the injured man at the time of enlistment and not upon the impairment in earning capacity in each individual case, so that there shall be no reduc-*

tion in the rate of compensation for individual success in overcoming the handicap of an injury. The bureau in adopting the schedule of ratings of reduction in earning capacity shall consider the impairment in ability to secure employment which results from such injuries. The bureau shall from time to time readjust this schedule of ratings whenever actual experience shall show that it is unjust to the disabled veteran.

(Section 202 (4), World War Veterans' Act, June 7, 1924, 43 Stat. 618. The War Risk Insurance Act contained a similar provision—Section 302 (4) Act of December 24, 1919; 41 Stat. 373.)

Said Section 202 also provides:

If and while the disability is rated as total and permanent, the rate of compensation shall be \$100 per month: Provided, however, That the permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bedridden, shall be deemed to be total, permanent disability * * *. (Section 202 (3) World War Veterans' Act, June 7, 1924, and as amended July 2, 1926; 43 Stat. 618; 44 Stat. 794. The War Risk Insurance Act contained a similar provision—Section 302 (3) Act of December 24, 1919; 41 Stat. 373.)

Upon its own motion or upon application the bureau may at any time review an award and, in accordance with the facts found upon such review, may end, diminish, or increase the compensation previously awarded, or, if compensation is increased, or if compensation has been refused, reduced, or discontinued, may (subject to the provisions of section 210 hereof) award compensation in proportion to the degree of disability sustained as of the date such degree of disability began, but not earlier than the date of discharge or resignation. * * * (Section 205, World War Veterans' Act, June 7, 1924; 43 Stat. 622. The War Risk Insurance Act contains similar provisions—Section 305 Act of August 9, 1921; 42 Stat. 154.)

Insurance Provisions

That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of \$500, and not less than \$1,000 or more than \$10,000, upon the payment of the premiums as hereinafter provided.

(Section 400, War Risk Insurance Act, Act of October 6, 1917; 40 Stat. 409.)

That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. * * * (Section 402, War Risk Insurance Act; 40 Stat. 409.)

Pursuant to the last-quoted statutory mandate the term and conditions of such insurance was duly determined upon and published on October 15, 1917, known and designated as Bulletin No. 1, and where material to the instant case reads as follows:

* * * The United States of America
* * * hereby insures John Doe, conditioned upon the payment of premiums as herein provided for the principal amount of \$ * * * converted into monthly installments of \$ * * * (the equivalent, when paid for 240 months, of the sum insured on the basis of interest at the rate of 3½ per cent per annum) payable to the insured if he/she, while this insurance is in force, shall become totally and permanently disabled * * * (Bulletin No. 1, Terms and Conditions of Soldiers and Sailors' Insurance, page 3.)

Pursuant to the statutory authority contained in Section 13, Act of October 6, 1917 (40 Stat. 399), now Section 5 of the World War Veterans' Act and

quoted above under General Provisions, the following regulation was duly promulgated on March 9, 1918, known and designated as Treasury Decision No. 20, War Risk:

TOTAL DISABILITY

Regulation No. 11 relative to the definition of the term "total disability" and the determination as to when total disability shall be deemed permanent.

TREASURY DEPARTMENT,
BUREAU OF WAR RISK INSURANCE,
Washington, D. C., March 9, 1918.

By virtue of the authority conferred in Section 13 of the War Risk Insurance Act the following regulation is issued relative to the definition of the term "total disability" and the determination as to when total disability shall be deemed permanent:

"Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation, shall be deemed, in Article III and IV, to be total disability.

" 'Total disability' shall be deemed to be 'permanent' whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. Whenever it shall be established that any person to whom any installment of insurance has been paid as provided in Article IV on the ground that the insured has become totally and per-

manently disabled, has recovered the ability to continuously follow any substantially gainful occupation the payment of installments of insurance shall be discontinued forthwith and no further installments hereof shall be paid so long as such recovered ability shall continue."

Authority to Sue on Contract of Insurance

In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies.

* * * (Section 19, World War Veterans' Act, 1924, as amended; 43 Stat. 1302. The War Risk Insurance Act contained a similar provision—Section 405, Act of October 6, 1917; 40 Stat. 410.)

ARGUMENT AND AUTHORITIES

The Court below in its memorandum opinion states:

The case, in its essential features, is not different from that of the case of Jack Floyd Welch (R. 23),

which was then on appeal to this Honorable Court.

On January 3, 1928, this Honorable Court decided the Welch case adversely to the contentions

of the appellee, and reversed the judgment of the lower court awarding a writ of mandamus to compel the Director of the United States Veterans' Bureau to pay petitioner compensation for permanent and total disability based upon the judgment of the court entered on the verdict of the jury in a suit against the United States on a War Risk insurance contract.

Since the *Welsh case* has been the subject of a very able and exhaustive opinion written by this Honorable Court, and since the Court below stated that the instant case is not different in its essential features from the Welch case, let us compare the two in some detail.

In the *Welch case* the petition for writ of mandamus relied upon the verdict of a jury and the judgment of the Supreme Court of the District of Columbia entered thereon, in a suit on a claim under a contract of war risk insurance, wherein the declaration contained allegations of certain disabilities alleged to have been acquired while Welch was in military service, and it was contended by Welch in his petition for writ of mandamus that since said allegations were denied, they became issues properly joined, and that the verdict and judgment aforesaid of permanent total disability from date of discharge on the insurance contract, included a finding that said alleged disabilities were service incurred and such as to require the Director of the United States Veterans' Bureau to award and pay compensation therefor. This Court in re-

versing judgment of the Supreme Court of the District of Columbia ordering that a writ of mandamus issue in the *Welch* case, held that such allegations in the insured's declaration were immaterial, that they, therefore, did not distinctly put in issue questions or facts so alleged, and, therefore, that said allegations were not adjudicated by the verdict of the jury and judgment entered thereon.

In the instant case, Starnes, in a petition filed in the District Court of the United States for the Eastern District of Texas, Tyler Division, on a claim under a contract of war risk insurance, in claiming the benefits of war risk term insurance, set up that its alleged disabilities were the result of, and acquired in, the naval service of the United States. If said allegations had remained in Starnes' petition in the insurance suit and had been denied by the defendant in that case and judgment had been entered in his favor, as it was, it would necessarily follow, in view of the decision of this Court in the *Welch* case, that any issue thus created would have been collateral and unnecessary to the adjudication on the insurance suit and would not be res judicata on the Director of the United States Veterans' Bureau, here the appellant, in deciding Starnes' right to compensation; but the appellee here is not in as good position as was Welch, for the allegations of service connection of his alleged disability were specifically stricken from the insurance action on Starnes' own motion before the case pro-

ceeded to judgment, as is set up in the memorandum opinion of the Honorable W. L. Estes, Judge of the United States District Court for the Eastern District of Texas, Tyler Division, which opinion is specifically made a part of appellee's petition herein. (R. 12.)

Having thus disposed of what the Court below characterizes as the essential features of the case, it is submitted that sufficient showing has been made, without going further, for this Court to reverse the Order of the Supreme Court of the District of Columbia that writ of mandamus issue against the appellant; but since the trial Court, in his memorandum opinion, has seen fit to suggest that this case contains some additional features not presented in the Welsh case, it is deemed necessary to herein point out their insufficiency.

The law conferring authority upon the appellant to act upon, decide and authorize payment of claims for compensation is cited and quoted above. Section 5 of the World War Veterans' Act, June 7, 1924, provides that:

The Director subject to the general direction of the President, shall administer, execute and enforce the provisions of this Act and shall have full power and authority to make rules and regulations not inconsistent with the provisions of the Act * * * and shall decide all questions arising under this Act and all decisions of questions of fact affecting any claimant to the benefits of

Titles II, III, and IV of this Act shall be conclusive except as otherwise provided herein.

It is respectfully submitted it is unnecessary to argue that the Director of the United States Veterans' Bureau, aided by such of its officers or employees as he may designate, is charged and vested by law with the adjudication and the decision of claims for compensation. The appellee recognizes this power and authority of the appellant, and asserts that the appellant and his predecessors have from time to time considered and acted upon his claim. The appellant, in his answer, shows that the claim of the appellee for compensation has been considered time after time, and further shows that final and last consideration was given and decision made by the appellant on appellee's claim on April 4, 1927, when the appellant determined that the appellee was not entitled to compensation. *The appellee does not allege that the respondent has failed or refused to act upon his claim. His sole complaint is directed to the final determination of the appellant, which determination was adverse to appellee.* Bearing in mind that by the provisions of the above-quoted law the appellant is charged with the determination of whether compensation is or is not payable, and bearing in mind that the appellant has in fact finally acted by rejecting the claim, is not the attempt on the part of the appellee herein to seek his remedy by mandamus proceeding un-

tenable? Conceding that a writ of mandamus will lie to compel the performance of a mere ministerial act, it must also, we respectfully submit, be admitted that the allowance or disallowance of a claim for compensation on the part of the appellant is not a mere ministerial act, but one which before he acts and decides requires the exercise of judgment and discretion.

“Mandamus is not the proper writ to control the judgment and discretion of an executive tribunal in the decision of a matter, decision of which is by law imposed upon it.”

“Whether its decision is right or wrong is not the question.”

“There may have been error in its adjudication, but that error we can not review.”
(*U. S. ex rel. Louisville Cement Co. vs. Interstate Commerce Commission*, 42 Appeals D. C. 514-519.)

“While it is difficult to understand just the theory upon which the Commission in the light of its former decisions reached the conclusion that appellant had not been damaged, yet the law reposes in its jurisdiction to pass upon issues of fact, and if * * * a wrong conclusion of fact has been reached and errors of law occur, it results from a mistaken judgment which can only be reviewed and corrected in a proceeding in error. * * * It is too well settled to require discussion that the writ of mandamus can not be converted into a writ of error for the purpose of reviewing errors of law com-

mitted by a tribunal whose jurisdiction to make the order or judgment complained of is conceded. Nor can the writ be had to compel a particular exercise of judgment or discretion.” (*Donner Steel Co., Inc., vs. Interstate Commerce Commission*, 52 Appeals D. C. 221–224–225.)

“The limitations upon the power of courts to control executive or judicial officers by mandamus are well defined. Where official or judicial discretion is reposed in such an officer, the exercise of that discretion can not be controlled by mandamus. The remedy, however, may be invoked to compel the officer to act. * * * Neither can he be compelled to decide the issue raised in a particular way.” (*Ewing vs. United States ex rel. Fowler Car Co.*, 45 Appeals D. C. 185–189.)

“The Court could not entertain an appeal from the decision of one of the secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion or judgment, nor can it by mandamus act directly upon the officer and guide and control his judgment or discretion in the matters committed to his care in the ordinary discharge of his official duties. * * * The interference of the Courts with the performance of the ordinary duties of the Executive Departments of the Government would be productive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given them. * * * It is equally true that the Courts are always reluctant to award or sustain a

writ of mandamus against an Executive Officer.” (*U. S. ex rel. Ashley vs. Roper*, 48 Appeals D. C., 69–75–76. Quoting from *Decatur vs. Paulding*, 14 Peters 497, and *Roberts vs. United States*, 176 U. S. 221.)

In the case of *Lochren vs. Long* (6 App. D. C. 486) this Honorable Court said:

If there is one question that ought to be regarded as settled it is that the Courts of the United States will not undertake through the process of mandamus to control the exercise of discretion by an executive officer of the Government in the performance of the duties entrusted to him. (Citing the case of *Seymour vs. State of South Carolina*, 2 App. D. C. 240–245.)

One of the recent cases on this subject is that of *Work vs. Rives* (267 U. S. 175–185), wherein the Supreme Court of the United States held (Syllabus):

Mandamus can not be issued to compel or control a duty by an officer in the discharge of which, by law, he is given discretion.

When an officer is given discretion as to construction of a statute under which he is to act, the court can not control his action by mandamus, although it may not agree with his interpretation of the statutes.

Mandamus does not lie to compel the Secretary of the Interior to allow compensation for loss in value of property secured to furnish manganese to the Government for war purposes, since the discretion as to the meaning of the statute was vested in the Secretary.

This Honorable Court in the case of *Forbes vs. Welch* (52 App. D. C. 303) pointed out that the Director is accorded wide jurisdiction in determining this question of disability except as provided in paragraph 3, Section 302 of the Act, and that his decision can not be reviewed by mandamus proceeding. This Honorable Court further said:

nor can we say that the Director acted arbitrarily, since his decision is based upon evidence adduced in a matter left by law to his discretion.

(Citing the case of *U. S. ex rel, Dunlap vs. Black*, 128 U. S. 40; 32 L. Ed. 354.)

Section 5 of the World War Veterans' Act and Section 13 of the War Risk Insurance Act, as amended October 6, 1917, above cited and quoted, both provide that the Director (appellant) shall decide all questions arising under the Act, and his decisions of questions of fact in claims to the benefits of compensation shall be conclusive.

The question of jurisdiction of courts on claims for compensation against the United States has been passed upon by the courts in several cases. The leading case is that of *Silberschein vs. United States* (266 U. S. 221-225; 69 L. Ed. 256), wherein the Supreme Court of the United States among other things said:

The statute which creates the asserted right commits to the director of the bureau the duty and authority of administering its provisions and deciding all questions arising under it; and in the light of the prior deci-

sions of this court, we must hold that his decision of such questions is final and conclusive, and not subject to judicial review; at least, unless the decision is wholly unsupported by the evidence, or is wholly dependent upon a question of law, or is seen to be clearly arbitrary or capricious.

Paragraph 5 of the petition alleges that as the appellant's predecessors in office had determined the appellee to be compensable, and as the appellant had admitted that the appellee was suffering from disabilities resulting from injury incurred in the line of duty while employed in the active service of the United States Navy, that the appellant is, in the absence of fraud, bound finally and conclusively by any previous determination made as to the appellee's injuries.

Section 205 of the World War Veterans' Act, June 7, 1924 (43 Stat. 622), provides as follows:

Upon its own motion or upon application the Bureau may at any time review an award, and, in accordance with the facts found upon such review, may end, diminish, or increase the compensation previously awarded, or, if compensation is increased, or if compensation has been refused, reduced, or discontinued, may (subject to the provisions of Section 210 hereof) award compensation in proportion to the degree of disability sustained as of the date such disability began, but not earlier than the date of discharge or resignation * * *.

NOTE.—Like authority is contained in Section 305 of the War Risk Insurance Act as amended August 9, 1921. (42 Stat. 154.)

In the case of *Silberschein vs. United States* (285 Fed. 397), affirmed by the Supreme Court of the United States, *supra*, the court applied the provisions of the statute last above quoted, and held that in an action against the Government for compensation, where the petition alleged that the Director had arbitrarily, unjustly, and unlawfully denied the plaintiff further compensation, the position of the plaintiff was without force in view of the provisions of the statute authorizing the Bureau to review an award at any time upon its own motion or on application, and to terminate or reduce the amount of such award, and that the allegation of the petition that the action of the Director was arbitrary, unjust, and unlawful, is merely an expression of a legal conclusion.

In the case of *Crouch, Gdn., vs. United States* (266 U. S. 180; 69 L. Ed. 233), which was a suit against the Government on a War Risk Insurance contract and a claim for compensation, wherein the Bureau had terminated the widow's rights by reason of her misconduct, on the question as to the right of the Bureau to terminate the compensation, the Supreme Court called attention to the provisions of the Act which authorize the Bureau on its own motion or upon application at any time to review an award, and in accordance with the facts found upon such review to end, diminish, or increase the compensation previously awarded, and held, under the authority of *Silberschein vs. United*

States, supra, that the court was without authority to review the actions of the Director in terminating the widow's compensation.

In the case of *Armstrong vs. United States* (16 Fed. (2) 387), which involved the question of the authority of the Court to review the action of the Bureau in awarding compensation for the purpose of reviving insurance, the Court, at page 389, said:

Section 202 provides that such ratings must be adopted and applied by the Bureau; that the Bureau shall from time to time re-adjust the schedule in accordance with actual experience, when it is shown that the rates are unjust to the disabled veteran. The entire Act contemplates that the rating shall be made and the compensation allowed and established by the Bureau through the machinery provided for that purpose. The consideration of these matters involves not only technical knowledge and exacting investigation and computation. The application of the schedules and the determination of the compensation due can not well be made except through the elaborate organization provided by law within the Bureau itself. It is on this account that exclusive control over matters of compensation was lodged in the Bureau. The courts have no authority to determine and adjust compensation, as such, even to the extent of reviewing the findings of the Bureau, except as hereinabove stated. They may not indirectly do what they can not do directly.

Under the authority conferred upon the appellant by Section 5 of the World War Veterans' Act, *supra*, to decide all questions of fact arising under the Act and under the authority of the above-cited cases, it is apparent that it is within the exclusive jurisdiction of the appellant to decide the facts upon which a claim for compensation must be established, and in aid of his decision on such facts, Congress has provided in the World War Veterans' Act, and in the War Risk Insurance Act, as amended, that:

a schedule of ratings of reductions in earning capacity from injuries or combination of injuries shall be adopted and applied by the Bureau. Ratings may be as high as 100 per centum * * *.

Pursuant to the mandate contained in the statute, schedules regulatory of the ratings to be assigned to a given ascertained mental or physical condition of a claimant were adopted and promulgated by the predecessor of the appellant, as well as by the appellant herein. That these schedules of ratings made by the appellant and his predecessors pursuant to the provisions of the statute, if not inconsistent therewith, have the force of law, has been definitely established in the following cases: *Casarello vs. United States*, 279 Fed. 396 (C. C. A. 3d); *Sawyer vs. United States*, 10 Fed. (2d) 416.

It seems necessary to recite here the conditions which must be present to support a rating and award of compensation, as such, limited, of course,

to those which are pertinent to the instant case: (1) The appellee must have been a member of the military or naval forces; (2) the appellee must show that he suffered personal injury or contracted disease in said military or naval forces on or after April 6, 1917, and before July 2, 1921, *which resulted in a disability*, or that he suffered or contracted an aggravation of a preexisting disability on or after April 6, 1917, and before July 2, 1921, or that a recurrence of a preexisting disability was caused by the military or naval service on or after April 6, 1917, and before July 2, 1921; (3) the disability, if any, to be rated in accordance with the Bureau schedule of ratings, except as to certain statutory disabilities (Section 202, paragraph 4, World War Veterans' Act, *supra*); (4) that the determination whether or not compensation is payable is conclusively vested in the Director of the Bureau (Section 5, World War Veterans' Act, *supra*). That such conditions were not present, are not present, and can not be shown to be present in this case will be hereinafter set forth.

The appelle is a constitutional psychopath, without psychosis. He was found so to be by the discharging officer of the United States Navy; by the judgment of the United States District Court on the insurance contract, and by the appellant herein.

The statement in the petition as to what the United States Court found is palpably erroneous. Said Court *did not* find the petitioner to be suffering from a mental disease; on the contrary, the

Court specifically held that the appellee had no insanity, no psychosis, and in his opinion stated:

Idiosyncracies or peculiarities of conduct he has displayed are due, according to physicians who testified for the Government, *and whose judgment in my opinion is correct*, to a constitutional defect,

and the Court concluded that the appellee is a constitutional psychopath.

The schedule of ratings adopted by the Bureau pursuant to the authority conferred by law, reads:

Constitutional psychopathic inferiority not aggravated in itself and with no added psychosis or neuropsychosis—no disability (no per cent).

This rating of “no per cent” has been applied by appellant to the claim for compensation of the appellee.

The appellant and his predecessor have determined that as a constitutional psychopath without psychosis, appellee does not have a disability resulting from either injury or disease, and is not entitled to compensation.

It is anticipated that counsel for the appellee may contend that constitutional psychopathy without psychosis is compensable as a disability within the meaning of Section 200, World War Veterans' Act, as amended.

There is nothing in the record of this case to show that constitutional psychopathy without psychosis is an injury or disease within the meaning of Sec-

tion 200 of the World War Veterans' Act, as amended.

The schedule of ratings was adopted by the Bureau upon the advice of experts and is based upon an exhaustive and scientific study, and the application thereof to individual cases requires special experience and training.

In the case of *Armstrong vs. United States* (16 Fed. (2d) 387) the Circuit Court of Appeals said:

The application of the schedule of ratings and the determination of compensation due can not well be made except through the elaborate organization provided by law within the Bureau itself. It is on this account that exclusive control over matters of compensation was lodged in the Bureau. The courts have no authority to determine and adjust compensation, as such, even to the extent of reviewing the findings of the Bureau, except as herein above stated. They may not indirectly do what they can not do directly.

There is nothing in the record of this case to show that the provisions of the schedule of ratings in reference to constitutional psychopathy are unreasonable and invalid, and it is respectfully submitted, in the absence of evidence, the Court can not as a matter of law hold that a constitutional psychopathic condition without psychosis is an injury or disease within the meaning of the World War Veterans' Act, as amended.

The schedule of ratings is a regulation made in pursuance of the statute, and is binding upon the

appellant as well as the appellee. The schedule of ratings is in harmony with the provisions of Section 200 of the World War Veterans' Act, as amended, which provides that officers and enlisted men employed in the active service of the War or Navy Department during the period named therein shall be conclusively held and taken to have been in sound condition when examined, accepted, and enrolled for service except as to defects, disorders, and infirmities made of record in the manner provided by proper authorities of the United States at the time of their entry into the service.

There is nothing in the record of this case to show that the appellee had superimposed on his normal mental deficiency a psychosis or neuropsychosis or any disease or injury due to the service of a disabling nature.

Upon the basis of figures obtained from the Navy and War Departments, the Bureau estimates that approximately forty thousand mental defectives were in the service. There is no question as to any such who were actually injured or became diseased or suffered any aggravation of their condition, or had any superimposed disability due to their service, that compensation would be payable, as in the case of any other man in the service who suffered injury or disease or an aggravation thereof. It is submitted that Congress never intended that constitutional psychopaths should receive the benefits of the compensation features of the Act when it is shown that upon discharge they were in the same

condition mentally as when they enlisted. Such has been the construction placed by the Bureau upon the compensation provisions of the various Acts of Congress for the relief of the ex-service man. Such construction is presumed to have been well known to and acquiesced in by Congress.

The practical construction given to a doubtful statute by a department or officer whose duty it is to carry it into execution, is entitled to great weight, and will not be disregarded or overturned except for cogent reasons and unless it is clear that such construction is erroneous. (*Pennoyer vs. McConoghy*, 140 U. S. 1-25; 35 L. Ed. 363-370; *United States vs. Sweet*, 189 U. S. 471-474; 47 L. Ed. 907-908; *United States vs. Finnell*, 185 U. S. 236-244; 46 L. Ed. 890-893.)

It must be conceded that a decision of the Director upon a right to compensation under the World War Veterans' Act is final and conclusive and is not subject to judicial review, at least unless the decision is wholly unsupported by evidence, wholly dependent upon a question of law, or clearly arbitrary or capricious. This is the language of the Supreme Court of the United States in the case of *Silberschein vs. United States*, *supra*.

It is manifest from the answer of the appellant that his final action in this case was supported by abundant evidence. Such answer sets up the result of many examinations made by Bureau experts as to the appellee's condition upon the basis of which

appellant's final action was taken. The lower Court in the case of *Silberschein vs. United States* (285 Fed. 397), subsequently affirmed by the Supreme Court of the United States, *supra*, has aptly stated the point involved in the following language:

The question involved in this connection is not whether, in the opinion of the Court, there was sufficient evidence to support the decision, but merely whether there was any such evidence.

The said Court in the *Silberschein case* further stated:

The plaintiff has not made it to appear that the decision of the executive official complained of was in excess of his jurisdiction, nor that it was without any evidentiary support, nor that it was based wholly upon a question of law, nor that it was the result of arbitrary unfairness warranting the interference of this Court. * * * An averment that said decision is "arbitrary, unjust or unlawful" is merely the expression of a legal conclusion and not the allegation of an issuable fact.

The appellee contends in his petition, and in his motion for issuance of writ notwithstanding the answer filed by the appellant, that the appellant is bound by the decision of the Navy Department as to the origin of the appellee's disabilities.

Much is made of the decision of the Judge Advocate General of the Navy concerning the ques-

tion of "in line of duty." This point is utterly immaterial and no longer a part of the statute under which claims for compensation are adjudicated.

It is the position of the appellant that it matters not what the Judge Advocate General of the Navy has found; it matters not what the judgment of the District Court in a suit by appellee on his insurance contract found. Assuming that there attaches to the findings of the Judge Advocate General and to the judgment of the District Court on the insurance contract, all the force and value which the appellee herein seeks to read into them, these findings amount to nothing more than evidence for the appellant to consider in deciding the appellee's claim for compensation. It can not be seriously contended that the judgment of any tribunal, or the opinion of any Department, or the opinion of an officer of any Department outside the Bureau, can be invoked, as decisive on a claim for compensation, in the first instance, and a fortiori, it can no more be seriously argued that the judgment of some outside tribunal or the decision of an officer of another Department can deprive the appellant of his discretion in deciding a claim for compensation. On this point, Mr. Justice Sutherland in delivering the opinion in the case of *Silberschein v. United States*, supra, said:

Because petitioner was suffering from disabilities shown by entries in the Adjutant General's office not to exist at the time of his entry into the service, and there was no cause

therefor other than petitioner's military service; that it was admitted by the Veterans' Bureau Hospital authorities that, since his discharge, petitioner had been suffering from disabilities incurred in the military service, as evidenced by communications and letters attached to the petition. *These are all matters bearing, at most, upon the soundness of the Director's determination upon a matter properly submitted to his judgment, and fall far short of establishing its arbitrary character.*

It is therefore respectfully submitted that the Order of the Court below directing the Writ of Mandamus to issue should be reversed.

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Attorney, U. S. Veterans' Bureau,
Of Counsel.

No. 4702.

COURT OF APPEALS
D. DISTRICT OF COLUMBIA
FILED

FEB 29 1928

IN THE
Supreme Court
Court of Appeals, District of Columbia

JANUARY TERM, 1928.

FRANK T. HINES, DIRECTOR OF THE U. S. VETERANS'
BUREAU, *Appellant*,

vs.

J. H. STARNES, COMMITTEE OF THE ESTATE AND PERSON
OF CHARLIE JOE STARNES, *Appellee*.

From the Supreme Court of the District of Columbia.

BRIEF FOR APPELLEE.

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IN THE
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FRANK T. HINES, DIRECTOR OF THE U. S. VETERANS'
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vs.

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OF CHARLIE JOE STARNES, *Appellee*.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This is an appeal from an order of the Supreme Court of the District of Columbia, directing that a Writ of Mandamus issue against General Frank T. Hines as Director of the United States Veterans Bureau, the petition therefor having been filed April 12, 1927.

A fair statement of the facts in the case as alleged in the Petition for the Writ and admitted in the answer of the appellant is as follows:

Charlie Joe Starnes, the ward of the appellee, enlisted on his second enlistment in the United States

Navy as a seaman of the second class in the month of January, 1918, and continued to serve in the navy until he was honorably discharged on a surgeon's certificate of disability on the 22nd day of June, 1918. At the time he enlisted, January, 1918, he was examined by naval authorities and found to be in sound condition both physically and mentally, no defects, disorders or infirmities, physical or mental, were noted by the examining board on his enlistment record. On the 19th day of June, 1918, the Board of Medical Survey of the Navy Department, after examining him, recommended that he be discharged from the United States Navy because he was unfit for further service on account of his mental condition. The Navy Department so discharged him from service on the 22nd day of June, 1918, certifying that he was, because of his mental condition, no longer fit for service in the navy. The Board of Survey held that his condition was not incurred in line of duty. That finding of the Board was appealed to the Judge Advocate General of the Navy who, on the 22nd day of July, 1922, held that Starnes' mental condition was incurred in line of duty.

On the 25th day of May, 1921, and on several occasions thereafter, to the 8th day of July, 1922, the Veterans Bureau of the United States, acting through its Director and Assistant Directors, and on the facts and evidence submitted to them by the said Starnes, or his committee, and after examining Starnes himself, held that the mental disease or ailment from which he suffered was incurred in line of duty in the United States Navy and was incurred without any misconduct, willful or otherwise, on the part of said Starnes. They held that his disability, to wit, his mental condition, was a compensable disability and awarded him compensation, under the terms of the World War Veterans Act,

for that disability, finding him totally disabled from following his prewar occupation. This rating of total disability was changed from time to time to a lesser rating and in the month of July, 1922, the Bureau finally held, absolutely contradicting its previous holdings over a period of four years, and absolutely contradicting the finding of the Navy Department through the Judge Advocate General thereof, that Starnes' disability was not compensable in that it was not contracted in line of duty in the United States Navy, assigning as a reason for their conclusion that it was not so incurred in line of duty in the United States Navy, that it existed prior to his enlistment in the Navy, and this notwithstanding the fact that it was not noted on his enlistment record at the time he was examined and accepted into the service. On this finding, his compensation was entirely discontinued. Thereafter and on the 2nd day of December, 1924, appellee, as guardian of the said Starnes, filed in the United States District Court for the Eastern District of Texas in the Tyler Division, suit against the United States of America on Starnes War Risk Insurance Contract. In that suit he claimed by the averments of the declaration that his ward had become permanently and totally disabled from following a gainful occupation while in the service of the United States Navy, and claimed the right to have and to recover on behalf of his ward, the benefits of his War Risk Insurance Policy. The allegations of that declaration were denied by the government and after trial before the Court, trial by jury having been waived, the Court found, in its written findings or conclusions of fact on the case, and in its memorandum on the case, that Starnes, the ward of the appellee, had been permanently and totally disabled from following any kind of gainful occupation

from the 19th day of June, 1918, four days before his discharge from the Navy, down to the date of the Court's findings, May 7, 1926. The Court awarded judgment in favor of appellee, as guardian of Starnes, against the United States on his insurance policy for the aggregate amount of the monthly insurance installments, \$57.50 per month, over that period of time, and the judgment was paid by the United States of America. The Court specifically found in its findings that Starnes was permanently and totally disabled because of his mental condition. It found him to be suffering from a psychopathic state during that period of time. The Court specifically found in its conclusions of fact that this mental disability began while Starnes was serving his country in the United States Navy on the 19th day of June, 1918, and specifically found that he was discharged from the United States Navy on account of that disability. The Court specifically found in its said conclusions of fact that that disability, psychopathic state, had continued from the 19th day of June, 1918, to the 7th day of May, 1926, and that it was, on the evidence produced before him, reasonably certain that it would continue throughout the life of Starnes.

This is the same disability, psychopathic state, that the Navy Department in July of 1922 specifically found was incurred in line of duty. It is the same disability that the Veterans Bureau of the United States, through its several directors, found in June, 1921, and on several occasions thereafter, was incurred by Starnes in line of duty while serving his country in the United States Navy, and so incurred in line of duty without any willful misconduct on the part of Starnes. It is the same disability that the Bureau found was compensable and the same disability that they rated him

totally disabled for, and on which they paid him compensation from the date of his discharge from the Navy to the 22nd day of June, 1922.

Thus far there is no discord on the pleadings between appellee and appellant.

It is admitted in the pleadings in this case that appellant and his predecessors in office *found* this identical disability, psychopathic state, to have been incurred in line of duty. It is admitted on the pleadings that the Navy Department of the United States likewise found this disability to have been incurred in line of duty. It is also admitted on the pleadings that the Veterans Bureau, and the directors thereof, rated this disability, at one time, as totally disabling and paid appellee's ward compensation on that rating. It is further admitted on the pleadings that this disability was incurred without misconduct, willful or otherwise, on the part of appellee's ward.

There is no question on the pleadings that the compensation awarded and paid appellee's ward, prior to June, 1922, on findings as above that the disability was incurred in line of duty without willful misconduct on the part of appellee's ward, was discontinued by the Bureau on that date on a finding that it was not incurred in line of duty while appellee's ward was in the United States Navy and on the finding that it was existent prior to his enlistment in the United States Navy. There is no dispute on the record that in June, 1922, appellee's ward was still suffering from this disability, nor is there any dispute, as a matter of fact, that he is suffering from it today. The only contention of the appellant is that the disability was not incurred in line of duty, on the one hand, and on the other, that even if it were incurred in line of duty, it is not a disease or injury and, therefore, is not compen-

sable under the terms of the World War Veterans Act, and it is with these two defenses of the government, with the above admitted statement of facts before us, that we propose to deal in this brief, but before so doing, we think it highly advisable to contrast this case with the case of Jack Floyd Welch vs. Frank T. Hines, Director, recently decided by this Court, in view of the fact that the government has laid much stress on this Court's finding in that case in an endeavor to convince the Court that the case at bar is on all fours therewith.

THIS CASE AS DIFFERENTIATED FROM THE WELCH CASE.

This Honorable Court will recall, and will readily see by glancing over its decision in the Welch case, that in that case we relied for our right to a Writ of Mandamus entirely on the proposition that Welch having been found by a jury permanently and totally disabled under his War Risk Insurance Contract, that it was the duty of the Director of the Bureau to rate him permanently and totally disabled also for compensation purposes. The basis of our petition in the Welch case was that the refusal of the Director to rate Welch permanently and totally disabled for compensation purposes was a capricious and arbitrary exercise of his discretion in the matter, the verdict and judgment in the insurance case being final and binding upon him for the purposes of a compensation award.

This Honorable Court held that the subject matter of the insurance suit and of the compensation suit were not identical and that the verdict and judgment in the insurance case were not, therefore, *res adjudicata* upon the Director on the question of compensation; the Court further holding that the verdict and judgment in the

insurance case being a general verdict, that they did not definitely establish or settle the nature or extent of Welch's disabilities; and further that inasmuch as willful misconduct was not a factor in the War Risk Insurance case, that the verdict and judgment in that case did not preclude the Director from a finding on this question for the purpose of making a compensation award. It will readily be recalled that there was no allegation in the petition for the Writ of Mandamus in that case that Welch's injuries or disabilities were not incurred by reason of his willful misconduct and this defect alone in the pleadings was held sufficient by the Court to reverse the decree of the lower Court ordering the Writ to issue.

In the case at bar, we have an entirely different state of facts. In this case the character of the disability is admitted. It is conceded on the pleadings that appellee's ward suffers, and since the date of his discharge, has suffered from a psychopathic state, a mental disability. It is conceded on the pleadings in this case that this disability was incurred without any willful misconduct on the part of appellee's ward. The two undetermined factors in the Welch case are, therefore, determined and agreed upon in this case and that much of the Welch decision by this Honorable Court as deals with these two factors, is, therefore, inapplicable to this case.

Again in this case, as the pleadings set forth (R. 15), the District Court, before whom the insurance suit was tried, did not return a general verdict as in the Welch case, but concluded the matter on a finding of fact specifically finding that appellee's ward was permanently and totally disabled four days before his discharge from the United States Navy because of a

mental disability, a psychopathic state, which has continued from prior to his discharge from the Navy down to the present date.

This Court in its decision in the Welch case clearly set out the elements to be established that a claimant might be entitled to compensation under the law holding that:

“Taking then a general survey of this Section, it is apparent that to entitle a person to compensation thereunder, certain facts must be established; first, that the applicant is entitled thereto by reason of military service; second, that he is disabled to the extent fixed by law; third, that his disability is of service origin; fourth, that such disability is not the result of his own willful misconduct; or that he bring himself within one of the excepted classes. These elements being established he is granted compensation by the law.”

Analyzing the facts set forth in the Welch record and reading them into the above, this Court held that a Writ of Mandamus could not issue in that case for the reason that Welch had not established on his pleadings the third and fourth elements set out above holding, in substance that the verdict and judgment in the insurance case being a general verdict did not establish the character of Welch's disability as insanity and that it, therefore, could not be presumed to have been incurred while in the military service, and further that he had failed to show or even to allege, in his mandamus proceeding, that his disabilities were not the result of his own willful misconduct and that this factor was not determined in the insurance suit.

In the case at bar, this Court will observe that all four of the above prerequisites have been established

by appellee's ward on this record and admitted by appellant. It is admitted, first, that he served in the armed force of the United States within the period of time prescribed by Section 200 of the World War Veterans' Act. Secondly, that the Court in the insurance case determined him permanently and totally disabled and thirdly, determined him permanently and totally disabled because of a specific disability specifically found by the Court in its findings to have existed from prior to his discharge from the Navy to the date of the verdict, which is the identical disability, psychopathy state, found by the Bureau, itself, and apparent on the record before this Court, to have been incurred by appellee's ward while in the military service "in line of duty," and found by the Navy Department of the United States to have been so incurred in the military service and "in line of duty." The Court will observe, fourth, that it is admitted in this case by appellant that the disability appellee's ward suffers from was not incurred by reason of any misconduct, willful or otherwise, on the part of appellee's ward.

We, therefore, submit that on the facts set forth in this record, we are entitled to have the Writ of Mandamus herein issued sustained by this Court on its decision in the case of Welch vs. Hines.

I.

Can Appellant, in Passing Upon a Claim to Compensation, Under the Provisions of the World War Veterans' Act, Autocratically and Arbitrarily Side-Step the Conclusive Presumptive Clause of Section 200 of Title II of the World War Veterans' Act?

II.

Can Appellant, in Passing Upon a Claim for Compensation, Under the Broad and Liberal Provisions of the World War Veterans' Act, Arbitrarily and Capriciously Hold That Appellee's Ward's Mental Disability is Not a Defect, Disorder or Infirmary Within the Provisions of the Said Act?

We will consider the above propositions in the order presented.

We beg first to call again to this Court's attention, the fact that appellee's ward was accepted into the military service in January of 1918 on his second enlistment, and after examination by naval authorities, as an able-bodied man, physically and mentally, and that as a result of said examination, no defects, disorders or infirmities, mental or physical, were made on his enlistment record or on any other record in any manner by proper authorities of the United States government or by any other authority.

Section 200, Title II of the World War Veterans' Act provides:

“For death or disability resulting from personal injury suffered or disease contracted in the military or naval service on or after April 6, 1917, and before July 2, 1921, or for an aggravation or *recurrence of a disability* existing prior to examination acceptance and enrollment for service, when such aggravation was suffered or contracted in or such recurrence was caused by, the military or naval service on or after April 6, 1917, and before July 2, 1921 * * * by an enlisted man * * * when employed in the active service under the War Department or Navy Department, the United States shall pay to such * * * enlisted man * * * or in the dis-

cretion of the director, separately to his or her dependents, compensation as hereinafter provided; but no compensation shall be paid if the injury, disease, aggravation or recurrence, has been caused by his own wilful misconduct: * * *

“That for the purposes of this Act, every such officer, enlisted man * * * employed in the active service under the * * * Navy Department, who was discharged or who resigned prior to July 2, 1921 * * * shall be conclusively held and taken to have been *in sound condition when examined*, accepted and enrolled for service, except as to defects, disorders or infirmities *made of record in any manner by proper authorities* of the United States *at the time of, or prior to inception of active service*, to the extent to which any such defect, disorder or infirmity was so made of record.”

Notwithstanding the clear and unmistakable provisions of said Section 200 that every enlisted man shall be *conclusively* held and taken to have been in *sound condition* when examined, accepted and enrolled for service, except as to defects, disorders or infirmities noted on his enrollment record, at the time of or prior to his entrance into the service, the Director of the United States Veterans Bureau, appellant in this case, has, on the admitted facts on the record in this case, cut off the award of compensation for several years paid appellee's ward, solely and only because he has found or claims to have found, in direct contradiction and violation of this provision of the Act, that appellee's ward's disability existed prior to his enlistment into the service and is, therefore, not compensable. Appellant made this finding and discontinued appellee's ward's payments of compensation four years after his discharge from the service, during which four years, the appellant and his predecessors in office had

held continuously that the disability was incurred while in the military service, without willful misconduct on the part of appellee's ward, and was compensable, and he made this finding despite the fact that there was, as is admitted on this record, no defects, disorders or infirmities, whatsoever, noted on appellee's ward's enrollment record or any other record by proper authorities of the United States or by any other authorities at the time of or prior to his inception into the military service. This act and finding of appellant made four years after appellee's ward's discharge from the Navy, and after a finding by the Navy Department itself, through the Judge Advocate General thereof, that this disability was incurred in line of duty and while in said service, your appellee has denounced and here denounces as a capricious, arbitrary and autocratic exercise of appellant's discretion in passing upon this claim for compensation.

If appellant has not the right to go behind and to void and to absolutely disregard and hold for naught the above conclusive presumptive clause of the World War Veterans' Act, then his act in so doing in this case is a capricious and arbitrary exercise of his discretion, and his act of June, 1922, in discontinuing appellee's ward's compensation, on his finding that the disability existed prior to the enlistment of appellee's ward into the military service, should be in no uncertain terms branded by this Honorable Court as wholly illegal and void beyond his power and authority and a capricious, high-handed and arbitrary exercise of the authority conferred upon him by the World War Veterans' Act to pass upon and determine claims for compensation under the provisions of that act, and this

brings us without further comment to our second general proposition hereinabove set out.

In this connection let us observe the decision of the Judge Advocate General of the Navy on this very case dated July 22, 1922, and, of record, of course, as an "Opinion of the Judge Advocate General" in the files of the Navy Department. This decision analyzes in great detail this case and analyzes the law as it has been recognized in the War and Navy Departments for years on the question of disabilities "in line of duty."

We here quote from this decision of the Navy Department.

"It appears from matter contained in attached papers that the above named man first enlisted in the United States Navy May 29, 1915, and served until November 14, 1916, upon which date he was discharged. It further appears that he reenlisted in said service January 8, 1918, and served until on or about June 19, 1918, on which date he was discharged by medical survey on account of "Constitutional Psychopathic State," origin not in line of duty, not due to his own misconduct.

From an examination of the matter presented in attached papers this Office is of the opinion that if there existed any disability which warranted the discharge of this man from the naval service by virtue of a medical survey, said disability must be held to have originated in the line of duty. The foregoing conclusion is based upon the case of Vincent Badolato, Ship's Cook, second class, U. S. Navy, May 19, 1921 (File No. 7657-390:40), who was discharged from the naval service on account of "dementia praecox," not in the line of duty, due to a "Predisposition existing prior to enlistment." In that case it was held that the naval service was estopped from asserting that Badolato was suffering from a predisposition towards dementia praecox before entering the service owing to the fact

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that he had served through a duration of war enlistment, received a discharge, and subsequently reenlisted, no evidence of said condition having been found of said predisposition prior to his enlistment.

The case of Vincent Badolato, above referred to, has been consistently followed by this Department in all similar cases since its approval. For example, it was held in the case of Rodney G. Clark, Apprentice Seaman, U. S. Navy, approved September 13, 1921 (File No. 29372-3) that before a finding of not in line of duty based upon a presumption that the disability complained of existed prior to claimant's enlistment in the naval service is warranted, it must be shown by definite facts that said individual was actually suffering from said disability prior to his enlistment. In other words, quoting decisions, "The facts which must be shown in a case such as the one under consideration before a finding of not line of duty is warranted, in the absence of fraud, are facts established by proof of their existence prior to enlistment; for example, if it is shown from the records of a creditable institution or the testimony of a reputable physician attending the complainant prior to his enlistment that he was suffering from tuberculosis, chronic, pulmonary, at that time; or if a statement of the claimant describing certain physical conditions which he had noticed prior to his enlistment is submitted, and this statement could have no other plausible explanation than that he was suffering from tuberculosis in some form at that time, *i. e.*, prior to his enlistment a finding of 'not in line of duty' would be warranted but under no other conditions except where fraud is shown.

Likewise in the case of Hansel Arcebole, approved October 4, 1921 (File No. 29372-2) it was held that in view of the fact that there was no evidence of epileptic seizures prior to his enlistment

in the Marine Corps since early childhood, the disability complained of must be held to have been incurred in the line of duty for the reason that a history of epileptic seizures during early childhood is not deemed sufficient to warrant a holding of not in the line of duty in the absence of facts showing that the claimant had suffered such seizures within a reasonable time prior to his receiving a blow on the head of sufficient force to knock him down, which blow was received while in the naval service and may in fact have brought on these seizures.

In the case of Walter Reinold Moline, Fireman, third class, U. S. Navy, approved December 10, 1921 (File No. 29372-4) it was likewise held that in the absence of definite facts showing that the claimant in each case did in fact have the disability complained of prior to his acceptance into the naval service a strong presumption that said disability had its origin prior to his entry into the naval service is not sufficient to warrant a conclusion that said disability was so incurred, but on the contrary it should be considered as having had its origin subsequent to the entrance of the claimant in the naval service. In the case of Moline the facts showed that he had apparently suffered from eye trouble for many years prior to his enlistment in the naval service, but there were no facts showing that the particular disability complained of actually existed prior to his entrance into the naval service, it was held, in the absence of fraud and facts showing that it was due to his own misconduct, that it originated in the line of duty.

Reference to attached papers discloses not only an absence of affirmative facts showing that the disability complained of existed prior to the entrance of the claimant in the naval service, but it is shown by sworn statements of individuals who have known the claimant for a number of years prior thereto that his "condition of health prior and up to the date of his enlistment was good."

Let us bear in mind that this law or rule of the War and Navy Departments was in effect long prior to the enactment of the World War Veterans' Act and that it was before Congress at the time it enacted Section 200 of that Act. It is, therefore, not only fair, but is absolutely just to assume that Congress, in using the term "in line of duty," had in mind that term as it was then used and applied in the War and Navy Departments.

It is inconceivable that Congress ever intended that an entirely independent Bureau, the Veterans' Bureau, should have the power, seven years after a man's discharge from active service, to review the findings of the Department in which he served and to nullify and set aside those findings and the applicable law of the Department under which he served, and this particularly when the head of the independent Bureau was utterly without information of a contemporary character as to the history of the man's disability, and forced to rely—if he relied upon anything for his decision—upon subsequent *ex parte* reports of persons who made an examination of the man several years after the disability was acquired and after an adjudication by the Department under which he served that said disability, both on the facts and on the applicable law, was acquired "in line of duty."

The appellant in this cause had and has no authority to disturb the findings by the Navy Department. It shocks the intelligence to suggest that Congress intended such power to be given to him. If the question is reasoned to an ultimate point, the Court will see that the Director of the Veterans' Bureau by such assumption of power would have the authority to emasculate all remedial legislation passed by Congress and to completely nullify the actions of cabinet officers and

their assistants in other departments, and thereby become an official autocrat, accountable to no one, with a Czar-like authority, with an utter disregard for vested rights or settled decisions preserving and establishing those rights.

It should be borne in mind that the law under which the Navy Department, in which Department appellee's ward served, by operation of which, that Department, through its Judge Advocate General and the Secretary of the Navy, found appellee's ward's disabilities to have been incurred "in line of duty," was the very law in force, not only at the time of this adjudication, but at the time of appellee's ward's enlistment in said service and in force during the entire time of his enlistment.

It is rather amusing to note, from the record of this case, the decisions of the Department of the Navy and of appellant on the question of whether or not appellee's ward's disabilities were incurred "in line of duty." From the date of appellee's ward's discharge from the Navy until July of 1922, the Navy Department was holding erroneously, as thereafter conceded, that his disabilities were not incurred "in line of duty," while the Veterans' Bureau, through the appellant, was holding that the disabilities were incurred "in line of duty." On the very date that the Navy Department, through the Judge Advocate General and the Secretary of the Navy, and by the opinion hereinabove referred to, corrected its erroneous holding and found that appellee's ward's disabilities were in fact and law incurred "in line of duty," the appellant autocratically, and without any new evidence before him, and contrary to the known and existing law on the subject, changed his holding that had been in effect for four years prior thereto, and found, contrary to his own

previous decisions and contrary to the corrected decision of the Navy Department, that appellee's ward's disabilities were not incurred "in line of duty" and discontinued his compensation.

It should not be over-looked, however, that under the World War Veterans' Act, in order that appellee's ward be entitled to compensation, that it is not necessary that he incurred his disabilities "in line of duty," it being simply and only necessary that it should be found that he incurred his disabilities *while in the service*, of the government and without any willful misconduct on his part.

There can be no doubt that appellee's ward incurred his disabilities while in the military service. Certainly he did not have the disabilities when he enlisted. Let us bear in mind that he was enlisted first in May of 1915, and of course, examined and accepted at that time by the Navy Department. He was discharged on November 14, 1916, from the Navy Department without any note on his discharge of any disability whatsoever. He was again accepted by the Navy Department after examination and enlisted in the service of the Navy on January 8, 1918. It can hardly be said in reason and justice that he was during all of this time a constitutional psychopath. Not only can this not be said in reason and justice, but the law, itself, as set out hereinabove, conclusively presumes that he was not suffering from any disability on any one of these dates.

It is admitted on the record here that he was suffering a disability, constitutional psychopathic state, or whatever they may call it, which rendered him on July the 19th, 1918, totally unfit for further military service, and he was discharged because of this disability on the 22nd day of July, 1918. Certainly on these admitted facts, this Court can arrive at no other conclusion than

that the decision of the Director of the Veterans' Bureau, that this disability was not incurred while appellee's ward was serving in the military service, is a capricious and arbitrary holding based upon no evidence whatsoever before him and absolutely contradictory of, and in total disregard of, the known and admitted facts as they appear on the record in this case.

This fact established, the only inquiry left is whether appellee's ward acquired this disability while in the military service because of his own willful misconduct. The Navy Department of the United States, as is set forth in the finding of July 22, 1922, and as was set forth on the discharge of Starnes from the Navy, has held and found that this disability was not incurred by reason of any willful misconduct on the part of appellee's ward. The Veterans' Bureau, through appellant, has held repeatedly that this disability was not incurred by reason of any willful misconduct on the part of appellee's ward. The petition for the Writ in this case specifically avers that the said disability was not incurred by reason of any willful misconduct on the part of appellee's ward, and the answer of appellant thereto admits this averment. There is, therefore, in this case no contention at all that this disability is the result of appellee's ward's willful misconduct.

Directing this Court's attention again to the fact that appellant for four years, on the facts and law, held that appellee's ward's disability was incurred in line of duty while in the military service, and without willful misconduct on the part of appellee's ward, we submit that the appellant is and was without authority to set aside and nullify, as he did, his own decisions and the decisions of his predecessors in office. Appellant repeatedly held, as did his predecessors in office,

and over a period of four years, that the disability of appellee's ward was incurred "in line of duty" while he was serving in the military service of the United States without willful misconduct on his part, and appellant, it is submitted, was absolutely without authority on the 22nd day of June, 1922, to set those findings aside, the same being then final and conclusive upon him, especially in the absence of a changed status affirmatively developed and shown. This is the settled rule of interpretation of departmental authority by the Courts. Under the principle of *stare decisis*, Court decisions must be respected and anything definitely established thereby must be considered by succeeding Judges as the settled principles of law upon which property and human life are based. As is well known, this is because, otherwise, there would be an ever-present state of uncertainty as to what is the law. We do not argue that an erroneous decision may not be corrected but whenever corrected it must be by another well reasoned decision based upon the development of law, science or business requiring a definite change but the principle always stands and must stand that a matter once settled must be regarded as permanently settled only to be changed by a change of status of the litigants or of business conditions or social developments. No such changed conditions have occurred with respect to appellee's ward's rights or the rights of others similarly situated. They remain the same.

Let us call this Court's attention again to the way in which appellee's ward's compensation was discontinued and the service connection of his disability, after it had stood admitted by the Bureau and appellant for four years, cut off. On July 10, 1922, the Central Board of Appeals held that appellee's ward's disability, constitutional psychopathic inferiority, origi-

nated in the service. This Central Board of Appeals, located at Washington, is, in the Bureau's set-up of Governing Boards, a sort of Appellate Body of Regional Boards of Appeals located throughout the United States.

On the same day, July 10, 1922, the Regional Board of Appeals located at Dallas, Texas, held, without any evidence before it that was not before the Central Board of Appeals on the same date, and without any evidence that had not been before the Department for years, that appellee's ward's disability, constitutional psychopathic inferiority, existed prior to his enlistment in the service, was not noted at the time of his enlistment and was not aggravated in or by his service.

On the 22nd day of July, 1922, the Navy Department, through the Judge Advocate General of the Navy, and the Secretary of the Navy, held that appellee's ward's disability, constitutional psychopathic inferiority, was incurred "in the line of duty" while appellee's ward was serving in the military service.

On August 16, 1922, the Central Board of Appeals, without any new evidence before it or without any change in the status of the parties, since its finding of July 10, 1922, that appellee's ward's disability originated in the service, set aside its own finding of July 10, 1922, and followed the finding of the subordinate board of the same date, July 10, 1922, and held, contrary to the decision of the Navy Department of July 22, 1922, that appellee's ward's disability was not incurred in line of duty nor in the military service, but existed prior to his enlistment, was not noted at the time of his enlistment and was not aggravated in or by his service, and this is the ruling or finding arrived at in the ir-

regular and non-sensical way set out above that has continued since August 16, 1922, and is the finding upon which appellee's ward's compensation was discontinued and the service connection of his disability withdrawn.

It requires neither logic, reason, nor the citation of authority to satisfy this Court, we are confident, that the act of the Director of the Veteran's Bureau, the appellant in this case, in approving the finding of August 16, 1922 was a capricious, high-handed and arbitrary exercise of his discretion on this compensation claim.

The various service organizations, The Disabled American Veterans of the World War, The American Legion and others, who represent veterans before the Veterans' Bureau, under powers of attorney written into the World War Veterans' Act of 1924, becoming alarmed at the situations brought about by changes of decisions by directors of the Bureau, without basis and without justification, and in order to prevent the recurrence of the very situation set forth in this record, prevailed upon the then director of the Veterans' Bureau to pass, and he did pass, General Order Number 211, which was approved by the Secretary of the Treasury of the United States, by the provisions of which order the decision of the director of the Bureau, the appellant in this case, once made becomes final after the expiration of six months from the date upon which it is made, and in the absence of any fraud on the part of the veteran in procuring the rating, the rating and decision as to the service connection of his disability cannot be set aside by the director or by any one acting by, through or under him, after the expiration of six months from its date, except upon the request of

the veteran that the case be reopened and reconsidered. This order has been in effect in the Bureau since early in the year of 1924.

It is our contention, however, that such an order should not have been necessary, that it was the duty of appellant to stand by his decisions or those of his predecessors whether a general order required him to do so or not, under the well recognized principles of law referred to.

We further contend that the change of position by the Appellant's Bureau, as hereinabove set out, has been and is utterly illegal, autocratic and unjustified.

II.

Can Appellant, in Passing Upon a Claim for Compensation, Under the Broad and Liberal Provisions of the World War Veterans' Act, Arbitrarily and Capriciously Hold That Appellee's Ward's Mental Disability is Not a Defect, Disorder or Infirmary Within the Provisions of the Said Act?

In order to justify his finding of August, 1922, that appellee's ward's disability, classed as psychopathic state, existed prior to his enlistment into the service, and in order to side-step and void the conclusive presumptive clause hereinabove set out, appellant has taken it upon himself to find, upon what theory we know not, that Starnes' disability is not a defect, disorder or infirmity within the provisions of the above presumptive clause and is not an injury or disease within the meaning of Section 200 of the World War Veterans Act, and that the same is not, therefore, compensable. If this Court will analyze the pleadings in this case, they will find the following facts admitted.

1. Appellee's ward enlisted on his last enlistment in the United States Navy in January, 1918.

2. His enlistment record made at the time of his enlistment and acceptance into the service contains no entry or record of any defect, disorder or infirmity.

3. He was discharged honorably from the service in June, 1918, as mentally incompetent to continue in the service.

4. On July 22, 1922, the Judge Advocate General of the Navy, reviewing the facts and conclusions of this case, ruled that appellee's ward's disability was incurred "in the line of duty."

5. The Veterans Bureau at all times prior to July 10, 1922, held appellee's ward's disability to have been incurred *in line of duty* and paid him compensation.

6. On July 10, 1922, appellee's ward was rated, by the Central Board of Appeals, as "fifty per cent, temporary partial continued, with a diagnosis of constitutional psychopathy inferiority, competent, held to have originated in the service under Section 300 of the War Risk Insurance Act."

7. "On July 10, 1922, the Board of Appeals convened at Dallas, Texas, and rated the condition of the said Charlie Joe Starnes as one of constitutional psychopathy inferiority, and as having existed prior to enlistment, not noted at the time of enlistment, nor aggravated in or by his service."

8. On August 16, 1922, the Central Board of Appeals sustained the finding of the Texas Board, set out in Item 7 above, and thereby reversed in toto its own finding set out in item 6 above and refused to accept the decision of the Judge Advocate General of the Navy set out in item 4 above.

9. This latter ruling of the Central Board of Ap-

peals that appellee's ward's disability, constitutional psychopathy inferiority, existed prior to enlistment, has been continued down to the present date.

10. While appellee's ward has, according to the answer, been examined several times since July, 1922, there is no allegation in the answer anywhere that they found him suffering from no disability or denial that he is permanently and totally disabled. The contention is solely on the answer that the disability existed prior to enlistment.

11. The District Court, in the Texas Division, found appellee's ward suffering from constitutional psychopathy inferiority and found specifically, in an action between this appellee and the United States of America, the identical entity, commanded by Act of Congress in Section 200 above quoted, to pay compensation, that appellee's ward was on June 22, 1918, the date of his discharge, and had at all times since, been and in the future would be, permanently and totally disabled from following a gainful occupation.

12. There is no claim in this case by the Government that appellee's ward's disability is the result of *his own willful misconduct*, and it is admitted that it is not.

The Veterans' Bureau, contrary to its own several prior decisions, through the appellant, in its findings and conclusions set forth in its answer, says that the appellee's ward is entitled to no compensation because his disability existed prior to enlistment. Such is the tenor of its answer.

At the trial table, and in their brief to this Court, the remarkable proposition was advanced, inconsistent, we think, with the answer itself, that the appellee's ward now and has for a long time suffered with a

physical and mental inferiority known as constitutional psychopathy for which he cannot be paid compensation because it is not a disease or injury even though it is a physical and mental disability. This is tantamount to saying that notwithstanding his enrollment in the service without notice of any disability, his service in the Navy and discharge on physician's certificate of disability, and the finding of the Navy Department's Judge Advocate General that his disability was incurred "in line of duty," that, nevertheless, because of the belated conclusion of some one in the United States Veterans' Bureau that he was physically and mentally deficient when he entered the service of the Navy Department, that he cannot now be compensated for existing, admitted disability because forsooth it is not a disease or injury. Such a defense is novel and to permit it to be sustained, in the face of the record, would be monstrous. Objecting, therefore, to their right to set up such a defense at this time, let us analyze it and show how preposterous it is:

I admit, says the appellant, through the United States District Attorney, that the appellee's ward is disabled; I admit a United States court has found him permanently and totally disabled; I admit my Bureau paid the judgment of that court.

Analyze, for a moment, what this means. The disability on which that court found appellee's ward permanently and totally disabled (constitutional psychopathy inferiority) is the very disability the Director says he had prior to enlistment, and still has. What does Section 200 of the World War Veterans' Act mean when it says that "for death or disability resulting from personal injury, suffered or disease contracted, * * * an enlisted man shall be paid compensa-

tion.” What is a disease within the meaning of this Act? Is constitutional psychopathy inferiority a disease within the meaning of this Act? The Government says no; Appellee says yes. This is an issue. In the absence of legal interpretations of the technical meaning of the words “constitutional psychopathy” (which seems to be a nomenclature invented by the Veterans’ Bureau in its application to disabled soldiers), we desire to quote the generally accepted meaning of these words, or the descriptive applicable word, from Webster’s New International Dictionary, as follows:

“*Psychopathy*—1. Med. Mental disease. See *Psychosis* 2.”

“*Psychosis*— 2. Med. A disease of the mind; esp. a functional mental disorder, that is, one unattended with structural changes in the brain.”

The above should be sufficient to clear the atmosphere of the suggestion by the Veterans’ Bureau that constitutional psychopathy is not a disease in contemplation of the Act of Congress.

Section 200 virtually defines this term disease in lines 19 and 22 on page 18 when it particularizes:

Defects, Disorders and Infirmities: Defects, disorders and infirmities not noted on the enlistment record of a man but noted on his discharge record are conclusively presumed to have been acquired while in the service. If the enlisted man got these defects, disorders or infirmities without willful misconduct, they are compensable. Does not Section 200 mean this? Is constitutional psychopathy inferiority either a defect, disorder or infirmity? The question answers itself in the affirmative, for if it is not a defect, disorder or infirmity, then what is it?

It is difficult to understand just how the appellant, charged with the enforcement of *so liberal a law* as the World War Veterans' Act, can split hairs over the technical meaning of a word. It is also amazing that an executive official, such as the Director of the United States Veterans' Bureau, can assert the power, nine years after the ending of the World War, to hold that a member of the Navy Department, suffered his injuries and disabilities prior to enlistment and not in line of duty, in the face of a decision by the highest legal department of the Navy Department, under which appellee's ward served, that his injuries and disabilities *were* acquired in line of duty.

It is rather amusing to take the Government's position and test it as technically as they wish to apply it. They admit this appellee's ward has a disability, which a court has held renders him permanently and totally disabled, but say it is not a *disease* contracted in the military or naval service. Hence, because it is not a disease, it is not compensable. Let us notice line 4 Section 200, "or for an aggravation or recurrence of a disability existing prior to examination * * * when such aggravation was suffered or contracted in or such recurrence was caused by the military service * * * the enlisted man shall be paid compensation." Let us be as technical, if you please, as the appellant and analyze these words with the admitted facts, or rather the appellant's contention. It will be noted that in these lines, above quoted, the disability does not have to be *an injury or a disease*. The word *disability* is not restricted or confined in its application. It includes *all* disabilities. It includes, therefore, constitutional psychopathy inferiority. The appellant says appellee's ward had this disability before he enlisted. Was it

aggravated by service? It was so remote, if their contention that he had it be sound, that it escaped the notice or attention of the Examining Officers. *It became so pronounced during his service that he was discharged because of it.* Certainly this is conclusive that it was *aggravated* while he was in the service. But was it aggravated *because of* his service? The Judge Advocate General of the Navy, reviewing the facts, says that it was "in line of duty," and the law so establishes it by irrebutable presumption.

Assuming then all the appellant contends as true on their pleaded facts, does not appellee's ward suffer from " * * * and aggravation or recurrence of a disability existing prior to examination, acceptance and enrollment for service," which "was caused by the military or naval service * * *"? If he does, he is then entitled to compensation, and, in the light of the verdict and judgment of the District Court for the Texas District, which was paid by the appellant as Director of the United States Veteran's Bureau, to a rating of permanent and total disability.

To hold that the appellee's ward is not entitled to be rated now as totally and permanently disabled for compensation purposes would be an arbitrary act, controlled merely by the capricious will of the Director. It would be a direct repudiation by an executive official, nine years after the World War, of (a) the decision of the Judge Advocate General of the Navy, declaring that the disabilities from which the appellee's ward suffers were incurred "in line of duty"; (b) it would be an absolute repudiation of the present Act of Congress, which must be "liberally and not technically construed; (c) it would be a direct repudiation of the decision of the Court of the State of Texas, who heard

all the witnesses as to the actual then condition of the appellee's ward; (d) it would be flying in the face of common sense and the judgment of all responsible persons.

If there ever was a case where the power of the court should control the utterly unwarranted action of an autocratic, executive official, it is the instant case.

III.

For Appellant to Hold That Appellee's Ward's Disabilities Do Not Render Him Permanently and Totally Disabled Would Be Capricious and Arbitrary.

There is no denial anywhere in the answer of the appellant to the petition for Writ of Mandamus that appellee's ward is permanently and totally disabled, and there is no denial that he has been permanently and totally disabled from following any gainful occupation since the date of his discharge from the United States Navy. It is admitted all through the answer of the appellant that appellee's ward suffers a disability and has from the date of his discharge from the navy suffered a disability, psychopathy inferiority. A district Court of the United States, not through a jury, but through the Court itself, has found, after hearing all of the evidence, that this disability, setting out in the Court's finding specifically what the disability was, psychopathy inferiority, has rendered appellee's ward permanently and totally disabled from the date of his discharge from the navy down to the present date, and he is still rated permanently and totally disabled for insurance purposes, because of this disability by the Veterans Bureau.

The verdict and judgment of the Texas Court as to the extent of appellee's ward's disability, constitu-

tional psychopathy inferiority has been accepted by appellant and the judgment of that Court, finding him permanently and totally disabled because of that particular disability, has been paid by the appellant and appellant has recognized the finding of that Court and paid appellee's ward his insurance benefits ever since that decision and down to the present date as one permanently and totally disabled.

There is, therefore, no question but that appellee's ward is permanently and totally disabled, and no question that he is so permanently and totally disabled because of the particular disability constitutional psychopathy inferiority. If, therefore, this Court finds, as we submit it must, that this disability was incurred while appellee's ward was serving his country in the Navy, and was incurred without willful misconduct on his part, it must find on the entire record that this disability renders him permanently and totally disabled, and must find that the refusal of the Director of the United States Veterans' Bureau to rate this man permanently and totally disabled for compensation purposes, is, and as long as it is continued will be, a capricious, arbitrary and unwarranted exercise of his duty and discretion in the premises.

We respectfully submit that there is nothing for this Court to do on the record before it but to sustain the decision of the lower court ordering the Writ of Mandamus to issue.

Respectfully submitted,

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